

AGENDA OF AN ADJOURNED REGULAR MEETING - NATIONAL CITY CITY COUNCIL/COMMUNITY DEVELOPMENT COMMISSION – HOUSING AUTHORITY OF THE CITY OF NATIONAL CITY

COUNCIL CHAMBERS
CIVIC CENTER
1243 NATIONAL CITY BOULEVARD
NATIONAL CITY, CALIFORNIA
TUESDAY, JULY 24, 2018 – 6:00 PM

ORDER OF BUSINESS: Public sessions of all Regular Meetings of the City Council / Community Development Commission - Housing Authority (hereafter referred to as Elected Body) begin at 6:00 p.m. on the first and third Tuesday of each month. Public Hearings begin at 6:00 p.m. unless otherwise noted. Closed Sessions begin at 5:00 p.m. or such other time as noted. If a workshop is scheduled, the subject and time of the workshop will appear on the agenda. The Mayor and Council members also sit as the Chairperson and Members of the Board of the Community Development Commission (CDC).

REPORTS: All open session agenda items and reports as well as all documents and writings distributed to the Elected Body less than 72 hours prior to the meeting, are available for review at the entry to the Council Chambers. Regular Meetings of the Elected Body are webcast and archived on the City's website **www.nationalcityca.gov**.

PUBLIC COMMENTS: Prior to the Business portion of the agenda, the Elected Body will receive public comments regarding any matters within the jurisdiction of the City and/or the Community Development Commission. Members of the public may also address any item on the agenda at the time the item is considered by the Elected Body. Persons who wish to address the Elected Body are requested to fill out a "Request to Speak" form available at the entrance to the City Council Chambers, and turn in the completed form to the City Clerk. The Mayor or Chairperson will separately call for testimony of those persons who have turned in a "Request to Speak" form. If you wish to speak, please step to the podium at the appropriate time and state your name and address (optional) for the record. The time limit established for public testimony is three minutes per speaker unless a different time limit is announced. Speakers are encouraged to be brief. The Mayor or Chairperson may limit the length of comments due to the number of persons wishing to speak or if comments become repetitious or irrelevant.

WRITTEN AGENDA: With limited exceptions, the Elected Body may take action only upon items appearing on the written agenda. Items not appearing on the agenda must be brought back on a subsequent agenda unless they are of a demonstrated emergency or urgent nature, and the need to take action on such items arose after the agenda was posted.

CONSENT CALENDAR: Consent calendar items involve matters which are of a routine or noncontroversial nature. All consent items are adopted by approval of a single motion by the City Council. Prior to such approval, any item may be removed from the consent portion of

RON MORRISON Mayor

ALBERT MENDIVIL Vice Mayor

JERRY CANO Councilmember

MONA RIOS Councilmember

ALEJANDRA SOTELO-SOLIS Councilmember

1243 National City Blvd. National City 619-336-4240

Meeting agendas and minutes available on web

WWW.NATIONALCITYCA.GOV

the agenda and separately considered, upon request of a Councilmember, a staff member, or a member of the public.

Upon request, this agenda can be made available in appropriate alternative formats to persons with a disability in compliance with the Americans with Disabilities Act. Please contact the City Clerk's Office at (619) 336-4228 to request a disability-related modification or accommodation. Notification 24-hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Spanish audio interpretation is provided during Elected Body Meetings. Audio headphones are available in the lobby at the beginning of the meeting.

Audio interpretación en español se proporciona durante sesiones del Consejo Municipal. Los audiófonos están disponibles en el pasillo al principio de la junta.

COUNCIL REQUESTS THAT ALL CELL PHONES AND PAGERS BE TURNED OFF DURING CITY COUNCIL MEETINGS.

OPEN TO THE PUBLIC

A. CITY COUNCIL

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE TO THE FLAG

PUBLIC COMMENTS (THREE-MINUTE TIME LIMIT)

PROCLAMATIONS

- 1. Alzheimer's and Brain Awareness Month
- 2. NaFFAA San Diego/Imperial Region Filipino-American Friendship Day

AWARDS AND RECOGNITIONS

PRESENTATIONS

3. <u>Introduction of New Employee Ray Stryker, Housing Specialist. (Housing & Economic Development)</u>

INTERVIEWS / APPOINTMENTS

CONSENT CALENDAR

- 4. Motion of the City Council of the City of National City approving the waiving of the reading of the text of the Ordinances considered at this meeting and providing that such Ordinances shall be introduced and/or adopted after a reading of the title only. (City Clerk)
- Sesolution of the City Council of the City of National City 1) authorizing the Chief of Police to sign a Memorandum of Understanding with the Federal Bureau of Investigation (FBI) to participate in operations with the Human Trafficking and Child Exploitation Task Force (HTCETF), 2) authorizing the acceptance of funds, and 3) authorizing the establishment of an appropriation and corresponding revenue budget for overtime up to the amount of \$18,042 per fiscal year. The HTCETF conducts criminal investigations to identify and target criminals who engage in sex trafficking, forced labor trafficking, domestic servitude and to rescue child victims; to reduce the vulnerability of children to sexual exploitation and abuse. (Police)

- 6. Resolution of the City Council of the City of National City 1) authorizing the acceptance of a grant award in the amount of \$100,000 from the Office of Traffic Safety (OTS) for the Selective Traffic Enforcement Program (STEP) grant 2019 to conduct DUI and traffic related enforcement operations for the Police Department 2) authorizing the Chief of Police to execute the Agreement of the award of the grant funds and 3) authorizing the establishment of fund appropriations and corresponding revenue budget. (Police)
- 7. Resolution of the City Council of the City of National City authorizing the Mayor to sign the First Amendment to the Agreement by and between the City of San Diego and City of National City to extend the term of the Agreement for one additional year, from July 1, 2018 through June 30, 2019, to provide fire and emergency medical dispatch services. (Fire)
- 8. Resolution of the City Council of the City of National City waiving the formal bid process pursuant to Municipal Code section 2.60.260 for the purchase of a Pierce Arrow XT pumper, and authorizing the City to piggyback the City of Los Angeles Supply Contract 59710 Amendment 1 with Pierce Manufacturing, Inc., that establishes a per unit cost of \$717,809.00 to purchase the pumper at a discounted unit cost of \$689,463.14 with equipment options totaling \$11,858.07 for the National City Fire Department for a grand total of \$701,321.21 using the Vehicle Replacement Fund. (Fire)
- 9. Resolution of the City Council of the City of National City, waiving the formal bid process consistent with National City Municipal Code Section 2.60.260 regarding cooperative purchasing and authorizing the City (Buyer) to piggyback 1) the State of California Department of General Services Contract #1-18-23-14B to award the purchase and build-out of six (6) fully equipped police patrol vehicles to Folsom Lake Ford in an amount not to exceed \$363,109.38; 2) the County of San Diego Department of Purchasing and Contracting Contract #550743 to award the purchase of police radios for the new patrol vehicles to the Regional Communications System (RCS) vendor, Motorola Solutions, Inc., in an amount not to exceed \$27,729.91. (Engineering/Public Works)
- 10. Resolution of the City Council of the City of National City, waiving the formal bid process consistent with National City Municipal Code Section 2.60.260 regarding cooperative purchasing and authorizing the City (Buyer) to piggyback the National Joint Powers Alliance Contract #120716-NAF to award the purchase and build-out of two (2) 2019 Ford Transit Connect Vans (S7E) XL LWB to National Auto Fleet Group in an amount not to exceed \$58,506.68 for the Engineering and Public Works Facilities Maintenance Division. (Engineering/Public Works)

- 11. Resolution of the City Council of the City of National City authorizing to extend 25 feet of existing red curb "No Parking" on the west side of "L" Avenue, north of E. Plaza Boulevard (TSC No. 2018-12). (Engineering/Public Works)
- 12. Resolution of the City Council of the City of National City authorizing to install Stop Control sign at various intersections within the neighborhood bounded by E. 1st Street to the north, E. 4th Street to the south, Highland Avenue to the east and "D" Avenue to the west (TSC No. 2018-13). (Engineering/Public Works)
- 13. Resolution of the City Council of the City of National City authorizing to remove the existing time restricted parking in front of the residence located at 1039 D Avenue (TSC No. 2018-14). (Engineering/Public Works)
- 14. Resolution of the City Council of the City of National City authorizing to remove the existing time restricted parking in front of the building located at 1900 Wilson Avenue (TSC No. 2018-15). (Engineering/Public Works)
- 15. <u>Temporary Use Permit Pumpkin Station hosted by Pinery Christmas Trees, Inc. at Westfield Plaza Bonita Mall from September 28, 2018 thru October 31, 2018 with no waiver of fees. (Neighborhood Services)</u>

PUBLIC HEARINGS

16. Public Hearing and adoption of an Ordinance of the City Council of the City of National City amending National City Municipal Code Title 13, Section 13.22.060, Subsection "A" pertaining to public improvement requirements for single building permits. (Engineering/Public Works)

ORDINANCES FOR INTRODUCTION

ORDINANCES FOR ADOPTION

NON CONSENT RESOLUTIONS

- 17. Resolution of the City Council of the City of National City calling and giving notice of the holding of a General Municipal Election to be held on Tuesday, November 6, 2018, for the purpose of submission of a ballot measure to the voters as required by the provisions of the laws of the State of California relating to general law cities. (City Clerk)
- 18. Resolution of the City Council of the City of National City ordering the submission of a measure to the qualified voters of the City of National City at the General Municipal Election to be held on November 6, 2018, relating to approval of an Ordinance establishing a program of residential rent control, including creation of an independent rent board, and including

- just cause for eviction protections and rent stabilization provisions. (City Clerk)
- 19. Resolution of the City Council of the City of National City requesting the Board of Supervisors of the County of San Diego to consolidate a General Municipal Election to be held on November 6, 2018 with the Statewide General Election to be held on that date pursuant to Section 10403 of the Elections Code. (City Clerk)
- 20. Resolution of the City Council of the City of National City authorizing the filing of an impartial analysis and written arguments relating to a measure to approve an Ordinance establishing a program of residential rent control, including creation of an independent rent board, and including just cause for eviction protections and rent stabilization provisions. (City Clerk)

NEW BUSINESS

- 21. Results of Investigations by Lozano Smith, Attorneys at Law. (City Attorney)
- 22. City Council discussion and direction on draft City Council Policy #119 Code of Ethics and Conduct for Elected Officials, Council Appointed Officials, and Members of City Boards and Commissions. (City Manager)

B. COMMUNITY DEVELOPMENT COMMISSION-HOUSING AUTHORITY

PUBLIC HEARINGS- HOUSING AUTHORITY

CONSENT RESOLUTIONS- HOUSING AUTHORITY

23. Resolution of the Community Development Commission-Housing
Authority of the City of National City authorizing the Executive Director to
execute a Subordination Agreement with Wilmington Trust National
Association, subordinating the Project Deed of Trust that secures the
Declaration of Covenants, Conditions and Restrictions (Tenant
Restrictions) on Summercrest Apartments located at 2721 Plaza
Boulevard in National City. (Housing & Economic Development)

NON CONSENT RESOLUTIONS- HOUSING AUTHORITY

NEW BUSINESS- HOUSING AUTHORITY

C. REPORTS

STAFF REPORTS

24. Report to the City Council of the City of National City on the status of finalizing Maintenance and Operating Agreements with the National City

Historical Society, National City Living History Farm Preserve, Inc. and the San Diego Electric Railway Association, Inc. for consideration by the City Council. (Housing & Economic Development)

MAYOR AND CITY COUNCIL

CLOSED SESSION REPORT

ADJOURNMENT

Regular Meeting of the City Council and Community Development Commission - Housing Authority of the City of National City - Tuesday -September 4, 2018 - 6:00 p.m. - Council Chambers - National City, California.

City Council Legislative Recess:

August 7, 2018 - City Council Meeting - Dispensed With August 21, 2018 - City Council Meeting - Dispensed With

The following page(s) contain the backup material for Agenda Item: Alzheimer's and Brain Awareness Month

Item	#
07/24	1/18

ALZHEIMER'S AND BRAIN AWARENESS MONTH

Proclamation Forthcoming

The following page(s) contain the backup material for Agenda Item: NaFFAA San Diego/Imperial Region Filipino-American Friendship Day

Item # ____ 07/24/18

NaFFAA San Diego/Imperial Region Filipino-American Friendship Day

Proclamation Forthcoming

The following page(s) contain the backup material for Agenda Item: Introduction of New Employee Ray Stryker, Housing Specialist. (Housing & Economic Development)

Item #
07/24/18

Introduction of New Employee Ray Stryker, Housing Specialist

(Housing and Economic Development)

The following page(s) contain the backup material for Agenda Item: Motion of the City Council of the City of National City approving the waiving of the reading of the text of the Ordinances considered at this meeting and providing that such Ordinances shall be introduced and/or adopted after a reading of the title only. (City Clerk)



OFFICE OF THE CITY CLERK

1243 National City Blvd. National City, California 91950 619-336-4228 phone / 619-336-4229 fax

Michael R. Dalla, CMC - City Clerk

To: Honorable Mayor and Council

From: Michael R. Dalla, City Clerk

Subject: Ordinance Introduction and Adoption

It is recommended that the City Council approve the following motion as part of the Consent Calendar.

"That the City Council waive reading of the text of all Ordinances considered at this meeting and provide that such Ordinances shall be introduced and/or adopted after a reading of only the title." The following page(s) contain the backup material for Agenda Item: Resolution of the City Council of the City of National City 1) authorizing the Chief of Police to sign a Memorandum of Understanding with the Federal Bureau of Investigation (FBI) to participate in operations with the Human Trafficking and Child Exploitat

CITY OF NATIONAL CITY, CALIFORNIA COUNCIL AGENDA STATEMENT

MEETING DATE: July 24, 2018 AGENDA ITEM NO.

ITEM TITLE:

Resolution of the City Council of the City of National City 1) authorizing the Chief of Police to sign a Memorandum of Understanding with the Federal Bureau of Investigation (FBI) to participate in operations with the Human Trafficking and Child Exploitation Task Force (HTCETF), 2) authorizing the acceptance of funds, and 3) authorizing the establishment of an appropriation and corresponding revenue budget for overtime up to the amount of \$18,042 per fiscal year. The HTCETF conducts criminal investigations to identify and target criminals who engage in sex trafficking, forced labor trafficking, domestic servitude and to rescue child victims; to reduce the vulnerability of children to sexual exploitation and abuse.

PREPARED BY: Greg Seward, Lieutenant

PHONE: Ext. 4538

APPROVED BY:

Police

DEPARTMENT:

EXPLANATION:

FBI MOU Resolution

If the Resolution is approved by the City Council, it will allow the Chief of Police to sign a Memorandum of Understanding with the FBI to have a National City Police Officer participate in operations with the Human Trafficking and Child Exploitation Task Force (HTCETF). The HTCETF conducts criminal investigations to identify and target criminals who engage in sex trafficking, forced labor trafficking, domestic servitude and to rescue child victims; to reduce the vulnerability of children to sexual exploitation and abuse. In addition, the HTCETF will enhance the effectiveness of the federal/state/local law enforcement resources through well-coordinated information sharing/investigative/prosecutorial avenues.

The MOU will allow our Human Trafficking Task Force (HTTF) Officer to participate in joint operations with HTCETF. By participating in these operations, the HTCETF may reimburse NCPD for overtime expended on these federal criminal prosecutions. For the purposes of the MOU, each participating agency is responsible for providing its respective personnel to participate in operations to the HTCETF with salaries, benefits and overtime. Overtime will be reimbursed by HTCETF for qualifying cases up to the amount of \$18,042 per year as set forth by the Salary /Overtime Compensation section. In furtherance, the assigned Investigator may be provided the use of a FBI owned/leased vehicle. The duration of the MOU is ongoing, contingent to funding for the program.

ACCOUNT NO. Revenue: 290-11667-3498 Expense: 290-411-667-1* No net financial impact. Revenues off-set expenses. ENVIRONMENTAL REVIEW: ORDINANCE: INTRODUCTION: FINAL ADOPTION: STAFF RECOMMENDATION: Approve Resolution. BOARD / COMMISSION RECOMMENDATION:	FINANCIAL STATEME	<u>NT</u> :	APPROVED.	Ha (a) su	Finance
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BOARD / COMMISSION RECOMMENDATION:	Approve Resolution.				
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FEDERAL BUREAU OF INVESTIGATION **HUMAN TRAFFICKING AND CHILD EXPLOITATION TASK FORCE MEMORANDUM OF UNDERSTANDING**

PARTIES

This Memorandum of Understanding (MOU) is entered into by and between the Federal Bureau 1. of Investigation (FBI) and the City of National City, National City Police Department. Nothing in this MOU should be construed as limiting or impeding the basic spirit of cooperation which exists between these agencies.

AUTHORITIES

Authority for the FBI to enter into this agreement can be found at Title 28, United States Code (U.S.C.), Section (§) 533; 42 U.S.C. § 3771; Title 28, Code of Federal Regulations (C.F.R.), § 0.85; and applicable United States Attorney General's Guidelines.

PURPOSE

The purpose of this MOU is to delineate the responsibilities of Human Trafficking and Child Exploitation Task Force (HTCETF) personnel formalize relationships between participating agencies for policy guidance, planning, training, public and media relations; and maximize interagency cooperation. This MOU is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law or otherwise by any third party against the parties, the United States, or the officers, employees, agents, or other associated personnel thereof.)

MISSION

- The mission of the Human Trafficking and Child Exploitation Task Force (HTCETF) is to provide a 4. rapid and intelligence-driven investigative response to sex trafficking; forced labor trafficking; domestic servitude; the victimization of children and other crimes against children within the FBI's jurisdiction; to identify and rescue child victims; to reduce the vulnerability of children to sexual exploitation and abuse; to reduce the negative impact of domestic and international parental rights disputes; and to strengthen the capabilities of the FBI and federal, state, local, and international law enforcement through training, intelligence-sharing, technical support, and investigative assistance.
- The defined priority threats that are aligned with the mission of the HTCETF are:
 - A. **Human Trafficking**
 - i. Recruitment, harboring, transportation, provision, or obtaining of a person for labor or commercial sexual services
 - B. **Child Abductions**
 - i. Non-ransom child abductions
 - ii. Domestic parental kidnapping
 - **Sexual Exploitation of Children Enterprises** C.
 - i. Domestic Child Sex Trafficking

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ii. Online Networks and Enterprises

D. Contact Offenses Against Children

- i. Domestic travel with intent to engage in illegal sexual activity with a minor
- ii. Child Sex Tourism travel abroad to engage in commercial sexual exploitation of a child under the age of 18
- iii. Production of Child Pornography
- iv. Coercion/enticement of a minor

E. Trafficking of Child Pornography

- i. Mass Distribution of Child Pornography
- ii. Possession of Child Pornography
- F. International Parental Kidnapping
- G. Other Crimes Against Children
 - i. All other crimes against children violations within the FBI's jurisdiction should be investigated in accordance with available resources.

SUPERVISION AND CONTROL

A. Supervision

- 6. Overall management of the task force shall be the shared responsibility of the participating agency heads and/or their designees.
- 7. The Special Agent in Charge (SAC) of the San Diego Division shall designate one Supervisory Special Agent (HTCETF Supervisor) to supervise the HTCETF. The HTCETF Supervisor may designate a Special Agent to serve as the Task Force Coordinator (Task Force Coordinator). Either the HTCETF Supervisor or the Task Force Coordinator shall oversee day-to-day operational and investigative matters pertaining to the HTCETF.
- 8. Conduct undertaken outside the scope of an individual's HTCETF duties and assignments under this MOU shall not fall within the oversight responsibility of the HTCETF Supervisor or Task Force Coordinator. As stated in paragraph 74, below, neither the United States nor the FBI shall be responsible for such conduct.
- 9. HTCETF personnel will report to his or her respective agency for personnel and administrative matters. Each participating agency shall be responsible for the pay, overtime, leave, performance appraisals, and other personnel matters relating to its employees detailed to the HTCETF. The FBI and the participating agency may provide for overtime reimbursement by the FBI by separate written agreement.
- 10. All FBI personnel will adhere to the FBI's ethical standards, including Department of Justice (DOJ)/FBI regulations relating to outside employment and prepublication review matters, and will remain subject to the Supplemental Standards of Ethical conduct for employees of the DOJ.
- All HTCETF personnel, which includes Task Force Officers, Task Force Members, and Task Force Participants, must adhere to the applicable U.S. Attorney General's Guidelines and Domestic Operations Investigative Guidelines (DIOG).
- 12. HTCETF personnel will continue to report to their respective agency heads for non-investigative administrative matters not detailed in this MOU.

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 Continued assignment of personnel to the HTCETF will be based on performance and at the discretion of appropriate management. The FBI SAC and HTCETF Supervisor will also retain discretion to remove any individual from the HTCETF.

B. Case Assignments

- 14. The FBI HTCETF Supervisor will be responsible for opening, monitoring, directing, and closing HTCETF investigations in accordance with existing FBI policy and the applicable United States Attorney General's Guidelines.
- 15. Assignments of cases to personnel will be based on, but not limited to, experience, training and performance, in addition to the discretion of the HTCETF Supervisor.
- For FBI administrative purposes, HTCETF cases will be entered into the relevant FBI computer system.
- 17. HTCETF personnel will have equal responsibility for each case assigned. HTCETF personnel will be responsible for complete investigation from predication to resolution.

C. Resource Control

18. The head of each participating agency shall determine the resources to be dedicated by that agency to the HTCETF, including personnel, as well as the continued dedication of those resources. The participating agency head or designee shall be kept fully apprised of all investigative developments by his or her subordinates.

OPERATIONS

A. Investigative Exclusivity

- 19. It is agreed that matters designated to be handled by the HTCETF will not knowingly be subject to non-HTCETF law enforcement efforts by any of the participating agencies. It is incumbent on each agency to make proper internal notification regarding the HTCETF's existence and areas of concern.
- 20. It is agreed that there is to be no unilateral action taken on the part of the FBI or any participating agency relating to HTCETF investigations or areas of concern. All law enforcement actions will be coordinated and cooperatively carried out.
- 21. HTCETF investigative leads outside of the geographic areas of responsibility for FBI San Diego Division will be communicated to other FBI offices for appropriate investigation.

B. Confidential Human Sources

22. The disclosure of FBI informants, or Confidential Human Sources (CHSs), to non-HTCETF personnel will be limited to those situations where it is essential to the effective performance of the HTCETF. These disclosures will be consistent with applicable FBI guidelines.

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- 23. Non-FBI HTCETF personnel may not make any further disclosure of the identity of an FBI CHS, including to other individuals assigned to the HTCETF. No documents which identify, tend to identify, or may indirectly identify an FBI CHS may be released without prior FBI approval.
- 24. In those instances where a participating agency provides a CHS, the FBI may, at the discretion of the SAC, become solely responsible for the CHS's continued development, operation, and compliance with necessary administrative procedures regarding operation and payment as set forth by the FBI.
- 25. The United States Attorney General's Guidelines and FBI policy and procedure for operating FBI CHSs shall apply to all FBI CHSs opened and operated in furtherance of HTCETF investigations. Documentation of, and any payments made to, FBI CHSs shall be in accordance with FBI policy and procedure.
- 26. Operation, documentation, and payment of any CHS opened and operated in furtherance of an HTCETF investigation must be in accordance with the United States Attorney General's Guidelines, regardless of whether the handling agency is an FBI HTCETF participating agency. Documentation of state, county, or local CHSs opened and operated in furtherance of HTCETF investigations shall be maintained at an agreed upon location.

C. Reports and Records

- 27. All investigative reporting will be prepared in compliance with existing FBI policy. Subject to pertinent legal and/or policy restrictions, copies of pertinent documents created by HTCETF personnel will be made available for inclusion in the respective investigative agencies' files as appropriate.
- 28. HTCETF reports prepared in cases assigned to HTCETF personnel will be maintained at an FBI approved location; original documents will be maintained by the FBI.
- 29. Records and reports generated in HTCETF cases which are opened and assigned by the HTCETF Supervisor with designated oversight for investigative and personnel matters will be maintained in the FBI investigative file for HTCETF.
- 30. HTCETF investigative records maintained at the San Diego Field Office of the FBI will be available to all HTCETF personnel, as well as their supervisory and command staff subject to pertinent legal, administrative and/or policy restrictions.
- 31. All evidence and original tape recordings (audio and video) acquired by the FBI during the course of the HTCETF investigations will be maintained by the FBI. The FBI's rules and policies governing the submission, retrieval and chain of custody will be adhered to by HTCETF personnel.
- 32. All HTCETF investigative records will be maintained at an approved FBI location. Placement of all or part of said information into participating agency files rests with the discretion of supervisory personnel of the concerned agencies, subject to SSA approval.
- 33. Classified information and/or documents containing information that identifies or tends to identify an FBI CHS shall not be placed in the files of participating agencies unless appropriate FBI policy has been satisfied.

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34. The Parties acknowledge that this MOU may provide HTCETF personnel with access to information about U.S. persons which is protected by the Privacy Act of 1974 and/or Executive Order 12333. The Parties expressly agree that all such information will be handled lawfully pursuant to the provisions thereof. The Parties further agree that if this access to information by HTCETF personnel requires a change in privacy compliance documents, those changes will be accomplished prior to access being granted.

INFORMATION SHARING

- 35. No information possessed by the FBI, to include information derived from informal communications between HTCETF personnel and FBI employees not assigned to the HTCETF, may be disseminated by HTCETF personnel to non-HTCETF personnel without the approval of the HTCETF Supervisor and in accordance with the applicable laws and internal regulations, procedures or agreements between the FBI and the participating agencies that would permit the participating agencies to receive that information directly. Likewise, HTCETF personnel will not provide any participating agency information to the FBI that is not otherwise available to it unless authorized by appropriate participating agency officials.
- 36. Each Party that discloses PII is responsible for making reasonable efforts to ensure that the information disclosed is accurate, complete, timely, and relevant.
- 37. The FBI is providing access to information from its records with the understanding that in the event the recipient becomes aware of any inaccuracies in the data, the recipient will promptly notify the FBI so that corrective action can be taken. Similarly, if the FBI becomes aware that information it has received pursuant to this MOU is inaccurate, it will notify the contributing Party so that corrective action can be taken.
- 38. Each Party is responsible for ensuring that information it discloses was not knowingly obtained or maintained in violation of any law or policy applicable to the disclosing Party, and that information is only made available to the receiving Party as may be permitted by laws, regulations, policies, or procedures applicable to the disclosing Party.
- 39. Each Party will immediately report to the other Party each instance in which data received from the other Party is used, disclosed, or accessed in an unauthorized manner (including any data losses or breaches).
- 40. The Parties agree that either or both may audit the handling and maintenance of data in electronic and paper recordkeeping systems to ensure that appropriate security and privacy protections are in place.

PROSECUTIONS

- 41. HTCETF investigative procedures, whenever practicable, are to conform to the requirements which would allow for either federal or state prosecution.
- 42. A determination will be made on a case-by-case basis whether the prosecution of HTCETF cases will be at the state or federal level. This determination will be based on the evidence obtained and

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- a consideration of which level of prosecution would be of the greatest benefit to the overall objectives of the HTCETF.
- 43. In the event that a state or local matter is developed that is outside the jurisdiction of the FBI or it is decided to prosecute a HTCETF case at the state or local level, the FBI agrees to provide all relevant information to state and local authorities in accordance with all applicable legal limitations.

A. Investigative Methods/Evidence

- 44. For cases assigned to an FBI Special Agent or in which FBI CHSs are utilized, the parties agree to conform to federal standards concerning evidence collection, processing, storage, and electronic surveillance. However, in situations where the investigation will be prosecuted in the State Court where statutory or common law of the state is more restrictive than the comparable federal law, the investigative methods employed by FBI case agents shall conform to the requirements of such statutory or common law pending a decision as to venue for prosecution.
- 45. In all cases assigned to state, county, or local law enforcement participants, the parties agree to utilize federal standards pertaining to evidence handling and electronic surveillance activities as outlined in the Domestic Investigations and Operations Guide to the greatest extent possible. However, in situations where the statutory or common law of the state is more restrictive than the comparable federal law, the investigative methods employed by state and local law enforcement agencies shall conform to the requirements of such statutory or common law pending a decision as to venue for prosecution.
- 46. The use of other investigative methods (search warrants, interceptions of oral communications, etc.) and reporting procedures in connection therewith will be consistent with the policies and procedures of the FBI.

B. Undercover Operations

47. All HTCETF undercover operations will be conducted and reviewed in accordance with FBI guidelines and the Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations. All participating agencies may be requested to enter into an additional agreement if an employee of the participating agency is assigned duties which require the officer to act in an undercover capacity.

USE OF LESS-THAN-LETHAL-DEVICES¹

48. The parent agency of each individual assigned to the HTCETF will ensure that while the individual is participating in FBI-led task force operations in the capacity of a task force officer, task force member, or task force participant, the individual will carry only less-lethal devices that the parent agency has issued to the individual, and that the individual has been trained in accordance with the agency's policies and procedures.

Pursuant to Section VIII of the DOJ Less-Than-Lethal Devices Policy dated May 16, 2011, all state/local officers participating in joint task force operations must be made aware of and adhere to the policy and its limits on DOJ officers.

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49. The parent agency of each individual assigned to the HTCETF will ensure that the agency's policies and procedures for use of any less-lethal device that will be carried by the task force officer, task force member, or task force participant are consistent with the DOJ policy statement on the Use of Less-Than-Lethal Devices.²

DEADLY FORCE AND SHOOTING INCIDENT POLICIES

50. HTCETF personnel will follow their own agencies' policies concerning firearms discharge and use of deadly force.

DEPUTATIONS

- 51. Local and state law enforcement personnel designated to the HTCETF, subject to a limited background inquiry, may be sworn as federally deputized Special Deputy United States Marshals, with the FBI securing the required deputation authorization. These deputations should remain in effect throughout the tenure of each investigator's assignment to the HTCETF or until the termination of the HTCETF, whichever comes first.
- 52. Deputized HTCETF personnel will be subject to the rules and regulations pertaining to such deputation. Administrative and personnel policies imposed by the participating agencies will not be voided by deputation of their respective personnel.

VEHICLES

- 53. In furtherance of this MOU, employees of participating agencies may be permitted to drive FBI owned or leased vehicles for official HTCETF business and only in accordance with applicable FBI rules and regulations, including those outlined in the FBI Government Vehicle Policy Directive (0430D) and the Government Vehicle Policy Implementation Guide (0430PG). The assignment of an FBI owned or leased vehicle to HTCETF personnel will require the execution of a separate Vehicle Use Agreement.
- 54. The participating agencies agree that FBI vehicles will not be used to transport passengers unrelated to HTCETF business.
- 55. The FBI and the United States will not be responsible for any tortious act or omission on the part of each participating agency and/or its employees or for any liability resulting from the use of an FBI owned or leased vehicle utilized by HTCETF personnel, except where liability may fall under the

The term "less-than-lethal" is synonymous with "less-lethal", "non-lethal", "non-deadly", and other terms referring to devices used in situations covered by the DOJ Policy on the Use of Less-Than Lethal Devices. "Less-lethal" is the industry standard and the terminology the FBI has elected to utilize in reference to this policy.

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Less-lethal – When use of force is required, but deadly force may not be appropriate, law enforcement officers may employ less-lethal weapons to gain control of a subject. Less-lethal weapons are designed to induce a subject to submit or comply with directions. These weapons give law enforcement officers the ability to protect the safety of officers, subjects, and the public by temporarily incapacitating subjects. While less-lethal weapons are intended to avoid causing any serious harm or injury to a subject, significant injuries and death can occur from their use.

R

provisions of the Federal Tort Claims Act (FTCA), as discussed in the Liability Section herein below.

- 56. The FBI and the United States shall not be responsible for any civil liability arising from the use of an FBI owned or leased vehicle by participating agency HTCETF personnel while engaged in any conduct other than their official duties and assignments under this MOU.
- To the extent permitted by applicable law, the participating agencies agree to hold harmless the FBI and the United States, for any claim for property damage or personal injury arising from any use of an FBI owned or leased vehicle by HTCETF personnel which is outside the scope of their official duties and assignments under this MOU.

SALARY/OVERTIME COMPENSATION

- 58. The FBI and each participating agency remain responsible for all personnel costs for their HTCETF representatives, including salaries, overtime payments and fringe benefits consistent with their respective agency, except as described in paragraph 56 below.
- 59. Subject to funding availability and legislative authorization, the FBI will reimburse to participating agency the cost of overtime worked by non-federal HTCETF personnel assigned full-time to HTCETF, provided overtime expenses were incurred as a result of HTCETF-related duties, and subject to the provisions and limitations set forth in a separate Cost Reimbursement Agreement to be executed in conjunction with this MOU. A separate Cost Reimbursement Agreement must be executed between the FBI and participating agency for full-time employee(s) assigned to HTCETF, consistent with regulations and policy, prior to any reimbursement by the FBI. Otherwise, overtime shall be compensated in accordance with applicable participating agency overtime provisions and shall be subject to the prior approval of appropriate personnel.

PROPERTY AND EQUIPMENT

60. Property utilized by the HTCETF in connection with authorized investigations and/or operations and in the custody and control and used at the direction of the HTCETF, will be maintained in accordance with the policies and procedures of the agency supplying the equipment. Property damaged or destroyed which was utilized by HTCETF in connection with authorized investigations and/or operations and is in the custody and control and used at the direction of HTCETF, will be the financial responsibility of the agency supplying said property.

FUNDING

61. This MOU is not an obligation or commitment of funds, nor a basis for transfer of funds, but rather is a basic statement of the understanding between the parties hereto of the tasks and methods for performing the tasks described herein. Unless otherwise agreed in writing, each party shall bear its own costs in relation to this MOU. Expenditures by each party will be subject to its budgetary processes and to the availability of funds and resources pursuant to applicable laws, regulations, and policies. The parties expressly acknowledge that the above language in no way implies that Congress will appropriate funds for such expenditures.

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FORFEITURES

- 62. The FBI shall be responsible for processing assets seized for federal forfeiture in conjunction with HTCETF operations.
- 63. Asset forfeitures will be conducted in accordance with federal law, and the rules and regulations set forth by the FBI and DOJ. Forfeitures attributable to HTCETF investigations may be equitably shared with the agencies participating in the HTCETF.

DISPUTE RESOLUTION

- 64. In cases of overlapping jurisdiction, the participating agencies agree to work in concert to achieve the HTCETF's objectives.
- 65. The participating agencies agree to attempt to resolve any disputes regarding jurisdiction, case assignments, workload, etc., at the field level first before referring the matter to supervisory personnel for resolution.

MEDIA RELEASES

- 66. All media releases and statements will be mutually agreed upon and jointly handled according to FBI and participating agency guidelines.
- 67. Press releases will conform to DOJ Guidelines regarding press releases. No release will be issued without FBI final approval.

SELECTION TO HTCETF AND SECURITY CLEARANCES

- 68. If a participating agency candidate for the HTCETF will require a security clearance, he or she will be contacted by FBI security personnel to begin the background investigation process prior to the assigned start date.
- 69. If, for any reason, the FBI determines that a participating agency candidate is not qualified or eligible to serve on the HTCETF, the participating agency will be so advised and a request will be made for another candidate.
- 70. Upon being selected, each candidate will receive a comprehensive briefing on FBI field office security policies and procedures. During the briefing, each candidate will execute non-disclosure agreements (SF-312 and FD-868), as may be necessary or required by the FBI.
- 71. Before receiving unescorted access to FBI space identified as an open storage facility, HTCETF personnel will be required to obtain and maintain a "Top Secret" security clearance. HTCETF personnel will not be allowed unescorted access to FBI space unless they have received a Top Secret security clearance.
- 72. Upon departure from the HTCETF, each individual whose assignment to the HTCETF is completed will be given a security debriefing and reminded of the provisions contained in the non-disclosure agreement to which he or she previously agreed.

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LIABILITY

- 73. The participating agencies acknowledge that this MOU does not alter the applicable law governing civil liability, if any, arising from the conduct of personnel assigned to the HTCETF.
- 74. The participating agency shall immediately notify the FBI of any civil, administrative, or criminal claim, complaint, discovery request, or other request for information of which the agency receives notice, concerning or arising from the conduct of personnel assigned to the HTCETF or otherwise relating to the HTCETF. The participating agency acknowledges that financial and civil liability, if any and in accordance with applicable law, for the acts and omissions of each employee detailed to the HTCETF remains vested with his or her employing agency. In the event that a civil claim or complaint is brought against a state or local officer assigned to the HTCETF, the officer may request legal representation and/or defense by DOJ, under the circumstances and pursuant to the statutes and regulations identified below.
- 75. For the limited purpose of defending against a civil claim arising from alleged negligent or wrongful conduct under common law under the FTCA, 28 U.S.C. § 1346(b), and §§ 2671-2680: An individual assigned to the HTCETF who is named as a defendant in a civil action as a result of or in connection with the performance of his or her official duties and assignments pursuant to this MOU may request to be certified by the Attorney General or his designee as having acted within the scope of federal employment at the time of the incident giving rise to the suit. 28 U.S.C. § 2679(d)(2). Upon such certification, the individual will be considered an "employee" of the United States government for the limited purpose of defending the civil claim under the FTCA, and the claim will proceed against the United States as sole defendant. 28 U.S.C. § 2679(d)(2). Once an individual is certified as an employee of the United States for purposes of the FTCA, the United States is substituted for the employee as the sole defendant with respect to any tort claims. Decisions regarding certification of employment under the FTCA are made on a case-by-case basis, and the FBI cannot guarantee such certification to any HTCETF personnel.
- 76. For the limited purpose of defending against a civil claim arising from an alleged violation of the U.S. Constitution pursuant to 42 U.S.C. § 1983 or Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971): An individual assigned to the HTCETF who is named as a defendant in a civil action as a result of or in connection with the performance of his or her official duties and assignments pursuant to this MOU may request individual-capacity representation by DOJ to defend against the claims. 28 C.F.R. §§ 50.15, 50.16. Any such request for individual-capacity representation must be made in the form of a letter from the individual defendant to the U.S. Attorney General. The letter should be provided to Chief Division Counsel (CDC) for the FBI San Diego Division, who will then coordinate the request with the FBI Office of the General Counsel. In the event of an adverse judgment against the individual, he or she may request indemnification from DOJ. 28 C.F.R. § 50.15(c)(4). Requests for DOJ representation and indemnification are determined by DOJ on a case-by-case basis. The FBI cannot guarantee the United States will provide legal representation or indemnification to any HTCETF personnel.
- 77. Liability for any conduct by HTCETF personnel undertaken outside of the scope of their assigned duties and responsibilities under this MOU shall not be the responsibility of the FBI or the United States and shall be the sole responsibility of the respective employee and/or agency involved.

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DURATION

- 78. The term of this MOU is for the duration of the HTCETF's operations, contingent upon approval of necessary funding, but may be terminated at any time upon written mutual consent of the agency involved.
- 79. Any participating agency may withdraw from the HTCETF at any time by written notification to the SSA with designated oversight for investigative and personnel matters or program manager of the HTCETF at least 30 days prior to withdrawal.
- 80. Upon termination of this MOU, all equipment provided to the HTCETF will be returned to the supplying agency/agencies. In addition, when an entity withdraws from the MOU, the entity will return equipment to the supplying agency/agencies. Similarly, remaining agencies will return to a withdrawing agency any unexpended equipment supplied by the withdrawing agency during any HTCETF participation.

MODIFICATIONS

SIGNATORIES

- 81. This agreement may be modified at any time by written consent of all involved agencies.
- 82. Modifications to this MOU shall have no force and effect unless such modifications are reduced to writing and signed by an authorized representative of each participating agency.

Special Agent in Charge Federal Bureau of Investigation	Date	
Manuel Rodriguez, Chief of Police	 Date	
NATIONAL CÎTY DOLICE DEDARTMENT		

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The following page(s) contain the backup material for Agenda Item: Resolution of the City Council of the City of National City 1) authorizing the acceptance of a grant award in the amount of \$100,000 from the Office of Traffic Safety (OTS) for the Selective Traffic Enforcement Program (STEP) grant 2019 to conduct DUI and

CITY OF NATIONAL CITY, CALIFORNIA COUNCIL AGENDA STATEMENT

MEETING DATE: JULY 24, 2018 AGENDA ITEM NO.:

ITEM TITLE:

Attachment 2
 Attachment 3

Resolution of the City Council of the City of National City 1) authorizing the acceptance of a grant award in the amount of \$100,000 from the Office of Traffic Safety (OTS) for the Selective Traffic Enforcement Program (STEP) grant 2019 to conduct DUI and traffic related enforcement operations for the Police Department 2) authorizing the Chief of Police to execute the Agreement of the award of the grant funds and 3) authorizing the establishment of fund appropriations and corresponding revenue budget.

and 3) authorizing the establishment of fund appropria	ations and corresponding r	evenue budget.
PREPARED BY: Jeffrey Meeks, Sergeant PHONE: (619) 336-4446	DEPARTMENT: Police APPROVED BY:	
EXPLANATION: On June 21 st , 2018 the National City Police Department funds from the Office of Traffic Safety (OTS). The grand October 1 st , 2018. This award is a based upon a grand for the purpose of reducing the number of persons kill involved collisions; to reduce fatal and injury hit and rukilled or injured; and to reduce fatal and injury collision movements and unsafe speeds were a factor.	nt was approved for a one to proposal submitted to the led or injured in traffic collisus collisions; to reduce the	year period beginning e Office of Traffic safety sions and alcohol e amount of motorcyclists
The grant funds allocated to accomplish these goals valued by DUI/DL checkpoints, DUI saturation patrols, and enforced violators, distracted drivers and motorcycle enforcement of the salso funding allowing for Traffic Safety presentations.	rcement operations regard ent within the city limits of t	ling speed, red light the City of National City.
FINANCIAL STATEMENT: ACCOUNT NO. [290-11665-3498 (Other Federal Grants) \$100,000 (290-411-665-1* (Overtime & related accounts) - \$100,000 No matching funds required	APPROVED:	
ENVIRONMENTAL REVIEW:		
ORDINANCE: INTRODUCTION FINAL ADOPTI	ON	
STAFF RECOMMENDATION: Adopt the resolution, []. OR Accept and file the report.	OR [other]	
BOARD / COMMISSION RECOMMENDATION:		
ATTACHMENTS: 1. Attachment 1		

1.	GRANT TITLE	
	Selective Traffic Enforcement Program (STEP)	
2.	NAME OF AGENCY	3. Grant Period
	National City Police Department	
4.	AGENCY UNIT TO ADMINISTER GRANT	From: 10/01/2018
	National City Police Department	To: 09/30/2019

5. GRANT DESCRIPTION

Best practice strategies will be conducted to reduce the number of persons killed and injured in crashes involving alcohol and other primary collision factors. The funded strategies may include impaired driving enforcement, enforcement operations focusing on primary collision factors, distracted driving, night-time seat belt enforcement, special enforcement operations encouraging motorcycle safety, enforcement and public awareness in areas with a high number of bicycle and pedestrian collisions, and educational programs. These strategies are designed to earn media attention thus enhancing the overall deterrent effect.

Federal Funds Allocated Under This Agreement Shall Not Exceed:

TERMS AND CONDITIONS: The parties agree to comply with the terms and conditions of the following which are by this

\$100,000.00

- reference made a part of the Agreement:
 - Schedule A Problem Statement, Goals and Objectives and Method of Procedure
 - Schedule B Detailed Budget Estimate and Sub-Budget Estimate (if applicable)
 - Schedule B-1 Budget Narrative and Sub-Budget Narrative (if applicable)
 - Exhibit A Certifications and Assurances
 - Exhibit B* OTS Grant Program Manual

Items shown with an asterisk (), are hereby incorporated by reference and made a part of this agreement as if attached hereto.

These documents can be viewed at the OTS home web page under Grants: www.ots.ca.gov.

We, the officials named below, hereby swear under penalty of perjury under the laws of the State of California that we are duly authorized to legally bind the Grant recipient to the above described Grant terms and conditions.

IN WITNESS WHI	EREOF, this Agreement has	been executed by	the parties he	reto.		
8. Approval Sig	gnatures					
A. Grant Di	RECTOR		B. At	THORIZING OFFICIAI	L OF AGENCY	
NAME:	PHONE:		Name: Phone:			
TITLE:	FAX:		TITLE: FAX:			
Address:			Address:			
, Email:			EMAIL:	,		
(Si _c	gnature)	(Date)		(Signature)		(Date)
C. FISCAL OR	ACCOUNTING OFFICAL		D. At	THORIZING OFFICIAL	L OF OFFICE OF T	RAFFIC SAFETY
NAME:	PHONE:		NAME:	Rhonda L. Craft	PHONE:	(916) 509-3030
TITLE:	FAX:		TITLE:	Director	FAX:	(916) 509-3055
Address:			Address:	2208 Kausen Drive, S		
, Email:			Exam.	Elk Grove, CA 95758		
EMAIL:			Email:	rhonda.craft@ots.ca.g	gov	
(Si	gnature)	(Date)		(Signature)		(Date)
E. ACCOUNT	ING OFFICER OF OFFICE OF T	RAFFIC SAFETY	9. DUNS	INFORMATION		
Name: Caroly	NAME: Carolyn Vu DUNS #: 072494073					
	Kausen Drive, Suite 300		REGISTERED ADDRESS: 1243 National City Blvd			Blvd
Elk Gr	ove, CA 95758		CITY:Natio	onal City	ZIP+4:91950-	4301
				•		
				_		

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10. PROJEC	TED EXPEN	DITURES				
FUND	CFDA	ITEM/APPROPRIATIO	N F.Y.	CHAPTER	STATUTE	PROJECTED EXPENDITURES
				AGREEMEN' TOTAL	<u> </u> 	\$100,000.00
				AMOUNT ENCUMBERED BY THIS DOCUMENT \$100,000.00		
I CERTIFY upon my own personal knowledge that the budgeted funds for the current budget year are available for the period and purpose of the expenditure stated above.			PRIOR AMOU AGREEMENT \$ 0.00		ERED FOR THIS	
OTS ACCOUNTING OFFICER'S SIGNATURE DATE SIGNED		22	TOTAL AMOUNT ENCUMBERED TO DAT		ERED TO DATE	
Ø.			SIGNED	\$100,000	0.00	

Schedule A

1. PROBLEM STATEMENT

The National City Police Department has seen an increase of fatal traffic collisions. There were none in 2015, then two in 2016 and now for the calendar year of 2017 there were six, which was an increase of 300%. The collision data for 2016 indicates there were 185 injury collisions compared to 184 in 2015, so the difference was minimal. This can be attributed to the enforcement activities enabled by the OTS grant and the opportunity to place more pro active police officers on the streets of National City with the focus on traffic safety. There was a 31% increase in traffic citations and a 122% increase in written warnings between 2016 and 2017, which shows a direct correlation with more proactive enforcement activity. The data also shows there were 1,611 citations issued in 2017 compared to 1,256 cites issued in 2016, for a total of 355 more citations. DUI arrests have continued to increase as we still place more officers in a proactive DUI enforcement role, rather than reactive to collisions. In 2016 there were 149 DUI arrests which increased to 177 in 2017, an increase of 19%. However the City of National City also saw a 12% increase in traffic collisions, including the 6 fatalities already mentioned. This shows the need for a continued aggressive approach to traffic and DUI enforcement in order to maintain our commitment to keeping the roadways safe.

2. PERFORMANCE MEASURES

A. Goals:

- 1. Reduce the number of persons killed in traffic collisions.
- 2. Reduce the number of persons injured in traffic collisions.
- 3. Reduce the number of pedestrians killed in traffic collisions.
- 4. Reduce the number of pedestrians injured in traffic collisions.
- 5. Reduce the number of bicyclists killed in traffic collisions.
- 6. Reduce the number of bicyclists injured in traffic collisions.
- 7. Reduce the number of persons killed in alcohol-involved collisions.
- 8. Reduce the number of persons injured in alcohol-involved collisions.
- 9. Reduce the number of persons killed in drug-involved collisions.
- 10. Reduce the number of persons injured in drug-involved collisions.
- 11. Reduce the number of persons killed in alcohol/drug combo-involved collisions.
- 12. Reduce the number of persons injured in alcohol/drug combo-involved collisions.
- 13. Reduce the number of motorcyclists killed in traffic collisions.
- 14. Reduce the number of motorcyclists injured in traffic collisions.
- 15. Reduce hit & run fatal collisions.
- 16. Reduce hit & run injury collisions.
- 17. Reduce nighttime (2100 0259 hours) fatal collisions.
- 18. Reduce nighttime (2100 0259 hours) injury collisions.

В.	Objectives:	Target Number
1.	Issue a press release announcing the kick-off of the grant by November 15. The kick-off	1
	press releases and media advisories, alerts, and materials must be emailed to the OTS	
	Public Information Officer at pio@ots.ca.gov, and copied to your OTS Coordinator, for	
	approval 14 days prior to the issuance date of the release.	
2.	Participate and report data (as required) in the following campaigns, National Walk to	10
	School Day, NHTSA Winter & Summer Mobilization, National Bicycle Safety Month,	
	National Click it or Ticket Mobilization, National Teen Driver Safety Week, National	
	Distracted Driving Awareness Month, National Motorcycle Safety Month, National Child	
	Passenger Safety Week, and California's Pedestrian Safety Month.	
3.	Develop (by December 31) and/or maintain a "HOT Sheet" program to notify patrol and	12
	traffic officers to be on the lookout for identified repeat DUI offenders with a suspended or	
	revoked license as a result of DUI convictions. Updated HOT sheets should be distributed	
	to patrol and traffic officers monthly.	
4.	Send law enforcement personnel to the NHTSA Standardized Field Sobriety Testing	3
	(SFST) (minimum 16 hours) POST-certified training.	
5.	Send law enforcement personnel to the NHTSA Advanced Roadside Impaired Driving	3
	Enforcement (ARIDE) 16 hour POST-certified training.	
6.	Send law enforcement personnel to the Drug Recognition Expert (DRE) training.	1
7.	Send law enforcement personnel to the DRE Recertification training.	2

8. Conduct DUI/DL Checkpoints. A minimum of 1 checkpoint should be conducted during the NHTSA Winter Mobilization and 1 during the Summer Mobilization. To enhance the overall deterrent effect and promote high visibility, it is recommended the grantee issue an advance press release and conduct social media activity for each checkpoint. For combination DUI/DL checkpoints, departments should issue press releases that mention DL's will be checked at the DUI/DL checkpoint. Signs for DUI/DL checkpoints should read "DUI/Driver's License Checkpoint Ahead." OTS does not fund or support independent DL checkpoints. Only on an exception basis and with OTS pre-approval will OTS fund checkpoints that begin prior to 1800 hours. When possible, DUI/DL Checkpoint screeners should be DRE- or ARIDE-trained.	4
9. Conduct DUI Saturation Patrol operation(s).	20
10. Conduct Traffic Enforcement operation(s), including but not limited to, primary collision factor violations.	14
11. Conduct highly publicized Distracted Driving enforcement operation(s) targeting drivers using hand held cell phones and texting.	4
12. Conduct highly publicized Motorcycle Safety enforcement operation(s) in areas or during events with a high number of motorcycle incidents or collisions resulting from unsafe speed, DUI, following too closely, unsafe lane changes, improper turning, and other primary collision factor violations by motorcyclists and other drivers.	2
13. Conduct highly publicized pedestrian and/or bicycle enforcement operation(s) in areas or during events with a high number of pedestrian and/or bicycle collisions resulting from violations made by pedestrians, bicyclists, and drivers.	4
14. Conduct Traffic Safety educational presentation(s) with an effort to reach community members. Note: Presentation(s) may include topics such as distracted driving, DUI, speed, bicycle and pedestrian safety, seat belts and child passenger safety.	4

3. METHOD OF PROCEDURE

A. Phase 1 – Program Preparation (1st Quarter of Grant Year)

- The department will develop operational plans to implement the "best practice" strategies outlined in the objectives section.
- All training needed to implement the program should be conducted this quarter.
- All grant related purchases needed to implement the program should be made this quarter.
- In order to develop/maintain the "Hot Sheets," research will be conducted to identify the "worst of the worst" repeat DUI offenders with a suspended or revoked license as a result of DUI convictions. The Hot Sheets may include the driver's name, last known address, DOB, description, current license status, and the number of times suspended or revoked for DUI. Hot Sheets should be updated and distributed to traffic and patrol officers at least monthly.
- Implementation of the STEP grant activities will be accomplished by deploying personnel at high collision locations. Media Requirements
- Issue a press release announcing the kick-off of the grant by November 15, but no earlier than October 1. If unable to meet the November 15 date, communicate reasons to your OTS Coordinator. The kick-off press releases and any related media advisories, alerts, and materials must be emailed for approval to the OTS Public Information Officer at pio@ots.ca.gov, and copied to your OTS Coordinator, 14 days prior to the issuance date of the release.

B. Phase 2 – Program Operations (Throughout Grant Year)

- The department will work to create media opportunities throughout the grant period to call attention to the innovative program strategies and outcomes. Media Requirements
- Send all grant-related activity press releases, media advisories, alerts and general public materials to the
 OTS Public Information Officer (PIO) at pio@ots.ca.gov, with a copy to your OTS Coordinator. The
 following requirements are for grant-related activities and are different from those regarding any grant
 kick-off release or announcement.
- 1. If an OTS-supplied, template-based press release is used, there is no need for pre-approval, however, the OTS PIO and Coordinator should be copied when at the same time as the release is distributed to the press.
- 2. If an OTS-supplied template is not used, or is substantially changed, a draft press release shall be sent to the OTS PIO for approval. Optimum lead-time would be 10 days prior to the release distribution date, but should be no less than 5 working days prior to the release distribution date.

- 3. Press releases reporting the immediate and time-valued results of grant activities such as enforcement operations are exempt from the recommended advance approval process, but still should be copied to the OTS PIO and Coordinator when the release is distributed to the press.
- **4.** Activities such as warrant or probation sweeps and court stings that could be compromised by advanced publicity are exempt from pre-publicity, but are encouraged to offer embargoed media coverage and to report the results.
- Use the following standard language in all press, media, and printed materials: Funding for this program was provided by a grant from the California Office of Traffic Safety, through the National Highway Traffic Safety Administration.
- Email the OTS PIO at <u>pio@ots.ca.gov</u> and copy your OTS Coordinator at least 30 days in advance, a short description of any significant grant-related traffic safety event or program so OTS has sufficient notice to arrange for attendance and/or participation in the event.
- Submit a draft or rough-cut of all printed or recorded material (brochures, posters, scripts, artwork, trailer graphics, etc.) to the OTS PIO at pio@ots.ca.gov and copy your OTS Coordinator for approval 14 days prior to the production or duplication.
- Space permitting, include the OTS logo, on grant-funded print materials; consult your OTS Coordinator for specifics and format-appropriate logos.
- Contact the OTS PIO or your OTS Coordinator, sufficiently far enough in advance of need, for consultation when deviation from any of the above requirements might be contemplated

C. Phase 3 – Data Collection & Reporting (Throughout Grant Year)

- Invoice Claims (due January 30, April 30, July 30, and October 30)
- Quarterly Performance Reports (due January 30, April 30, July 30, and October 30)
 - Collect and report quarterly, appropriate data that supports the progress of goals and objectives.
 - Provide a brief list of activity conducted, procurement of grant-funded items, and significant media activities. Include status of grant-funded personnel, status of contracts, challenges, or special accomplishments.
 - Provide a brief summary of quarterly accomplishments and explanations for objectives not completed or plans for upcoming activities.
 - Collect, analyze and report statistical data relating to the grant goals and objectives.

•

4. METHOD OF EVALUATION

Using the data compiled during the grant, the Grant Director will complete the "Final Evaluation" section in the fourth/final Quarterly Performance Report (QPR). The Final Evaluation should provide a brief summary of the grant's accomplishments, challenges and significant activities. This narrative should also include whether goals and objectives were met, exceeded, or an explanation of why objectives were not completed.

5. ADMINISTRATIVE SUPPORT

This program has full administrative support, and every effort will be made to continue the grant activities after grant conclusion.

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Schedule B

FUND NUMBER	CATALOG NUMBER (CFDA)	FUND DESCRIPTION	TOTAL AMOUNT
164AL-19	20.608	Minimum Penalties for Repeat Offenders for Driving While Intoxicated	\$70,000.00
402PT-19	20.600	State and Community Highway Safety	\$30,000.00

COST CATEGORY	CFDA	TOTAL COST TO GRANT
A. PERSONNEL COSTS		To Glunt
Positions and Salaries		
Full-Time		
		\$0.00
<u>Overtime</u>		
DUI/DL Checkpoints	20.608	\$29,600.00
DUI Saturation Patrols	20.608	\$18,000.00
San Diego DUI Task Force	20.608	\$10,800.00
Benefits @ 11.18%	20.608	\$6,529.00
Traffic Enforcement	20.600	\$12,600.00
Distracted Driving	20.600	\$3,600.00
Motorcycle Safety	20.600	\$1,800.00
Pedestrian and Bicycle Enforcement	20.600	\$3,600.00
Traffic Safety Education	20.600	\$1,068.00
Benefits @ 11.18%	20.600	\$2,534.00
Part-Time		\$0.00
Category Sub-Total		\$90,131.00
B. TRAVEL EXPENSES	L	I
In State Travel	20.600	\$2,798.00
		\$0.00
Category Sub-Total		\$2,798.00
C. CONTRACTUAL SERVICES		
Ci Colvinio I Ci E DEN 17020		\$0.00
Category Sub-Total		\$0.00
D. EQUIPMENT		
D. Egonii E. T.		\$0.00
Category Sub-Total		\$0.00
E. OTHER DIRECT COSTS	l	l
Educational Materials	20.600	\$2,000.00
DUI Checkpoint Supplies	20.608	\$5,071.00
Category Sub-Total		\$7,071.00
F. Indirect Costs	1	1
2. 2.2.2.2.2.		\$0.00
Category Sub-Total		\$0.00
GRANT TOTAL	<u> </u>	\$100,000.00

BUDGET NARRATIVE	
PERSONNEL COSTS DUI/DL Checkpoints - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	QUANTITY 4
DUI Saturation Patrols - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	20
San Diego DUI Task Force - Overtime for grant funded law enforcement operations by appropriate staff to conduct operations within the County as part of a countywide task force with other law enforcement agencies.	12
Benefits @ 11.18% - Medicare 1.45 Workers Comp 9.73	1
Traffic Enforcement - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	14
Distracted Driving - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	4
Motorcycle Safety - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	2
Pedestrian and Bicycle Enforcement - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	4
Traffic Safety Education - Overtime for grant funded traffic safety presentations or campaigns conducted by appropriate department personnel.	4
Benefits @ 11.18% - Medicare 1.45 Workers Comp 9.73	1
TRAVEL EXPENSES In State Travel - Costs are included for appropriate staff to attend conferences and training events supporting the grant goals and objectives and/or traffic safety. Local mileage for grant activities and meetings is included. Anticipated travel may include the Governor's Highway Safety Association conference and the annual International Association of Chiefs of Police DRE conference which are both scheduled for Anaheim. All conferences, seminars or training not specifically identified in the Budget Narrative must be approved by OTS. All travel claimed must be at the agency approved rate. Per Diem may not be claimed for meals provided at conferences when registration fees are paid with OTS grant funds.	1
CONTRACTUAL SERVICES	
EQUIPMENT -	
OTHER DIRECT COSTS Educational Materials - costs of purchasing, developing or printing brochures, pamphlets, fliers, coloring books, posters, signs, and banners associated with grant activities, and traffic safety conference and training materials. Items shall include a traffic safety message and if space is available the OTS logo. Additional items may be purchased if approved by OTS.	1

DUI Checkpoint Supplies - on-scene supplies needed to conduct sobriety checkpoints. Costs may include 28" traffic cones, MUTCD compliant traffic signs, MUTCD compliant high visibility vests (maximum of 10), traffic counters (maximum of 2), generator, gas for generators, lighting, reflective banners, electronic flares, PAS device supplies, heater, propane for heaters, fan, anti-fatigue mats, and canopies. Additional items may be purchased if approved by OTS. The cost of food and beverages will not be reimbursed.	1
INDIRECT COSTS	

STATEMENTS/DISCLAIMERS

There will be no program income generated from this grant.

Nothing in this "agreement" shall be interpreted as a requirement, formal or informal, that a particular law enforcement officer issue a specified or predetermined number of citations in pursuance of the goals and objectives here under.

Exhibit A

CERTIFICATIONS AND ASSURANCES HIGHWAY SAFETY GRANTS (23 U.S.C. CHAPTER 4 AND SEC. 1906, Pub. L. 109-59, AS AMENDED)

Failure to comply with applicable Federal statutes, regulations, and directives may subject Grantee Agency officials to civil or criminal penalties and/or place the State in a high-risk grantee status in accordance with 49 CFR §18.12.

The officials named on the grant agreement, certify by way of signature on the grant agreement signature page, that the Grantee Agency complies with all applicable Federal statutes, regulations, and directives and State rules, guidelines, policies and laws in effect with respect to the periods for which it receives grant funding. Applicable provisions include, but are not limited to, the following:

- 23 U.S.C. Chapter 4—Highway Safety Act of 1966, as amended
- 49 CFR Part 18—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- 23 CFR Part 1300—Uniform Procedures for State Highway Safety Grant Programs

NONDISCRIMINATION

(applies to subrecipients as well as States)

The State highway safety agency will comply with all Federal statutes and implementing regulations relating to nondiscrimination ("Federal Nondiscrimination Authorities"). These include but are not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin) and 49 CFR part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. 324 et seq.), and Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686) (prohibit discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 794 et seq.), as amended, (prohibits discrimination on the basis of disability) and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. 6101 et seq.), (prohibits discrimination on the basis of age);
- The Civil Rights Restoration Act of 1987, (Pub. L. 100-209), (broadens scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal aid recipients, subrecipients and contractors, whether such programs or activities are Federally-funded or not);
- Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing) and 49 CFR parts 37 and 38;

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations); and
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (guards against Title VI national origin discrimination/discrimination because of limited English proficiency (LEP) by ensuring that funding recipients take reasonable steps to ensure that LEP persons have meaningful access to programs (70 FR 74087-74100).

The State highway safety agency—

- Will take all measures necessary to ensure that no person in the United States shall, on the grounds of race, color, national origin, disability, sex, age, limited English proficiency, or membership in any other class protected by Federal Nondiscrimination Authorities, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any of its programs or activities, so long as any portion of the program is Federally-assisted;
- Will administer the program in a manner that reasonably ensures that any of its subrecipients, contractors, subcontractors, and consultants receiving Federal financial assistance under this program will comply with all requirements of the Non-Discrimination Authorities identified in this Assurance;
- Agrees to comply (and require its subrecipients, contractors, subcontractors, and consultants to comply) with all
 applicable provisions of law or regulation governing US DOT's or NHTSA's access to records, accounts,
 documents, information, facilities, and staff, and to cooperate and comply with any program or compliance
 reviews, and/or complaint investigations conducted by US DOT or NHTSA under any Federal Nondiscrimination
 Authority;
- Acknowledges that the United States has a right to seek judicial enforcement with regard to any matter arising under these Non-Discrimination Authorities and this Assurance;
- Agrees to insert in all contracts and funding agreements with other State or private entities the following clause:

"During the performance of this contract/funding agreement, the contractor/funding recipient agrees—

- a. To comply with all Federal nondiscrimination laws and regulations, as may be amended from time to time;
- b. Not to participate directly or indirectly in the discrimination prohibited by any Federal non-discrimination law or regulation, as set forth in appendix B of 49 CFR part 21 and herein;
- c. To permit access to its books, records, accounts, other sources of information, and its facilities as required by the State highway safety office, US DOT or NHTSA;
- d. That, in event a contractor/funding recipient fails to comply with any nondiscrimination provisions in this contract/funding agreement, the State highway safety agency will have the right to impose such contract/agreement sanctions as it or NHTSA determine are appropriate, including but not limited to withholding payments to the contractor/funding
 - recipient under the contract/agreement until the contractor/funding recipient complies; and/or cancelling, terminating, or suspending a contract or funding agreement, in whole or in part; and
- e. To insert this clause, including paragraphs (a) through (e), in every subcontract and sub agreement and in every solicitation for a subcontract or sub-agreement, that receives Federal funds under this program.

POLITICAL ACTIVITY (HATCH ACT)

(applies to subrecipients as well as States)

The State will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

CERTIFICATION REGARDING FEDERAL LOBBYING

(applies to subrecipients as well as States)

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

- 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- 3. The undersigned shall require that the language of this certification be included in the award documents for all sub-award at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

RESTRICTION ON STATE LOBBYING

(applies to subrecipients as well as States)

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

(applies to subrecipients as well as States)

Instructions for Primary Tier Participant Certification (States)

1. By signing and submitting this proposal, the prospective primary tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.

- 2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective primary tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary tier participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- 3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default or may pursue suspension or debarment.
- 4. The prospective primary tier participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary tier participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5. The terms covered transaction, civil judgment, debarment, suspension, ineligible, participant, person, principal, and voluntarily excluded, as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
- 6. The prospective primary tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- 7. The prospective primary tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.
- 8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (https://www.sam.gov/).
- 9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency may terminate the transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Tier Covered Transactions

(1) The prospective primary tier participant certifies to the best of its knowledge and belief, that it and its principals: (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

- (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.
- (2) Where the prospective primary tier participant is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Lower Tier Participant Certification

- 1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.
- 2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.
- 3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 4. The terms covered transaction, civil judgment, debarment, suspension, ineligible, participant, person, principal, and voluntarily excluded, as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
- 5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- 6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.
- 7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (https://www.sam.gov/).
- 8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies,

including suspension or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions:

- 1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.
- 2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

BUY AMERICA ACT

(applies to subrecipients as well as States)

The State and each subrecipient will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using Federal funds. Buy America requires a State, or subrecipient, to purchase with Federal funds only steel, iron and manufactured products produced in the United States, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or

that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. In order to use Federal funds to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification for approval by the Secretary of Transportation.

PROHIBITION ON USING GRANT FUNDS TO CHECK FOR HELMET USAGE

(applies to subrecipients as well as States)

The State and each subrecipient will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

LAW ENFORCEMENT AGENCIES

All subrecipient law enforcement agencies shall comply with California law regarding profiling. Penal Code section 13519.4, subdivision (e), defines "racial profiling" as the "practice of detaining a suspect based on a broad set of criteria which casts suspicion on an entire class of people without any individualized suspicion of the particular person being stopped." Then, subdivision (f) of that section goes on to provide, "A law enforcement officer shall not engage in racial profiling."

The following page(s) contain the backup material for Agenda Item: Resolution of the City Council of the City of National City authorizing the Mayor to sign the First Amendment to the Agreement by and between the City of San Diego and City of National City to extend the term of the Agreement for one additional year, from

CITY OF NATIONAL CITY, CALIFORNIA COUNCIL AGENDA STATEMENT

MEETING DATE: July 24, 2018 AGENDA ITEM NO.:

ITEM TITLE: Resolution of the City Council of the City of Amendment to the Agreement by and bet the term of the Agreement for one addition fire and emergency medical dispatch services.	tween the City of San Diego and City of Nonal year, from July 1, 2018 through June	lational City to extend
PREPARED BY: Frank Parra PHONE: 619-336-4551 EXPLANATION: On June 4, 2013, the City Council adopte City of San Diego to provide fire and eme years, from July 1, 2013 until June 30, 20 the "Agreement may be extended for four parties, and subject to the Mayor's author extension." The National City Fire Depart execute the First Amendment to the Agre year, effective July 1, 2018 through June	ergency medical dispatch services to Nation 18. As allowed in Section M - Extensions (4) additional one (1) year periods by writing a contract extension relative to the the the City Council to authors to extend the term of the Agreeme	n Agreement with the conal City for five (5) s of the Agreement, itten agreement of the each one year orize the Mayor to
FINANCIAL STATEMENT: ACCOUNT NO.	APPROVED:APPROVED:	
ENVIRONMENTAL REVIEW: This is not a project and, therefore, not subject to ORDINANCE: INTRODUCTION FI	environmental review. NAL ADOPTION	
STAFF RECOMMENDATION: Adopt the resolution. BOARD / COMMISSION RECOMMENDATION	ON:	
ATTACHMENTS:		

First Amendment to the Dispatch Agreement

The following page(s) contain the backup material for Agenda Item: Resolution of the City Council of the City of National City waiving the formal bid process pursuant to Municipal Code section 2.60.260 for the purchase of a Pierce Arrow XT pumper, and authorizing the City to piggyback the City of Los Angeles Supply Contr

CITY OF NATIONAL CITY, CALIFORNIA COUNCIL AGENDA STATEMENT

MEETING DATE: AGENDA ITEM NO. July 24, 2018

ITEM TITLE:

Resolution of the City Council of the City of National City waiving the formal bid process pursuant to Municipal Code section 2.60.260 for the purchase of a Pierce Arrow XT pumper, and authorizing the City to piggyback the

per unit cost of \$717,809.00 to purchase the pum	endment 1 with Pierce Manufacturing, Inc., that establishes per at a discounted unit cost of \$689,463.14 with equipme Fire Department for a grand total of \$701,321.21 using the	nt
PREPARED BY: Frank Parra	DEPARTMENT : Fire	
PHONE: 619-336-4551	APPROVED BY:	
Contract 59710 - Amendment 1 that establishes a	ne City would like to piggyback the City of Los Angeles Supper unit cost of \$717,809.00 to Pierce Manufacturing, who vible bidder, and was awarded their bid for a Pierce Arrow	vas
competitive bid price. The City of National City spediscount of \$25,449.00 that was applied. This aw final price for the pumper to \$689,463.14 including the second	by of National City the opportunity to take advantage of ecifications had \$54,344.00 less in options and the prepayment is made for \$638,016.00 unit price bringing National Citax and other fees. In addition, \$11,858.07 in equipment option. Appropriation established in the Vehicle Replacement Form	ent ty's ons
	lies with Municipal Code section 260.260. Additional man pricing, other brands, other purchasing options, and it is in tunity.	
FINANCIAL STATEMENT:	APPROVED: Finar	тсе
ACCOUNT NO. 644-412-125-519-0000 (Vehicle Replacement	APPROVED: MIS Fund) - \$701,321.21	
ENVIRONMENTAL REVIEW:		
This is not a project and, therefore, not subject	to environmental review.	
ORDINANCE: INTRODUCTION: FINAL	ADOPTION:	
STAFF RECOMMENDATION:		
Adopt the Resolution.		
BOARD / COMMISSION RECOMMENDATION:		

ATTACHMENTS:

- 1. City of Los Angeles Supply Contract 59710 Amendment 1
- 2. Proposal for Furnishing Fire Apparatus
- 3. Proposal for 100% Pre-Payment Option
- 4. New Apparatus Equipment List
- 5. Resolution

CITY OF LOS ANGELES

TONY M. ROYSTER GENERAL MANAGER AND CITY PURCHASING AGENT



DEPARTMENT OF GENERAL SERVICES ROOM 701 CITY HALL SOUTH 111 EAST FIRST STREET LOS ANGELES, CA 90012 (213) 928-9555 FAX NO. (213) 928-9515

March 13, 2018

Pierce Manufacturing, Inc. 2600 American Dr. Appleton, WI 54912

SUBJECT: CITY OF LOS ANGELES SUPPLY CONTRACT 59710 – AMENDMENT 01
Triple Combination Apparatus Fire Truck

The following price changes are effective March 1, 2018:

Item #	Old Price	New Price
1	\$677,179.00	\$ 717,809.00

Triple Combination Apparatus Fire Truck

Item #	Old Price	New Price
2	\$669,179.00	\$709,809.00

Triple Combination Apparatus Fire Truck with Option A

Item #	Old Price	New Price
3	\$654,179.00	\$694,809.00

Triple Combination Apparatus Fire Truck with Option B

Item #	Old Price	New Price
4	\$677,179.00	\$717,809.00

Triple Combination Apparatus Fire Truck with Option C





CITY OF LOS ANGELES

CALIFORNIA

TONY M. ROYSTER GENERAL MANAGER AND CITY PURCHASING AGENT



DEPARTMENT OF GENERAL SERVICES ROOM 701 CITY HALL SOUTH LOS ANGELES, CA 90012 (213) 928-9555 FAX No. (213) 928-9515

All other contract terms and conditions remain unchanged and in force. Questions regarding this contract modification should be addressed to Kevin Thornton, Procurement Analyst, at 213/928-9548 or via e-mail: kevin.thornton@lacity.org.

Tony M. Royster General Manager and City Purchasing Agent

By: Supply Services Manager Approved as to Form Michael N. Feuer City Attorney

By: Arletta Maria Brimsey Deputy City Attorney





PROPOSAL FOR FURNISHING FIRE APPARATUS

April 5, 2018

NATIONAL CITY FIRE DEPARTMENT

333 E. 16th Street National City, CA. 91950



The undersigned is prepared to provide for you, upon an order being placed by you, for final acceptance by South Coast Fire Equipment, Inc., at its corporate office in Ontario, California, the apparatus and equipment herein named and for the following prices:

		Each	Extension
One (1) Pierce Arrow XT Pierce's Ultimate Configuration (PUC) pumper per the as per the enclosed purchase contract from Los Angeles	\$	717,809.00	\$ 717,809.00
Changes to Customer Specifications	\$	(54,344.00)	\$ (54,344.00)
Customers price after changes per specification	\$	663,465.00	\$ 663,465.00
Sales Tax @ 7.750%	\$	51,418.54	\$ 51,418.54
Performance Bond	\$	1,990.40	\$ 1,990.40
California Tire Fee	\$	10.50	\$ 10.50
TOTAL PURCHASE PRICE	\$	716,884.44	\$ 716,884.44

PLEASE NOTE THE FOLLOWING ABOUT THIS QUOTATION:

Payment options are available and are included under separate cover. One of these options may save your department a significant amount of money!

Said apparatus and equipment are to be built and shipped in accordance with the specifications hereto attached, delays due to strikes, war or international conflict, failures to obtain chassis, materials, or other causes beyond our control not preventing, within about 330-360

CALENDAR DAYS after receipt of this order and the acceptance thereof at our office in Ontario, California, and to be delivered to you at National City, CA.

The specifications herein contained shall form a part of the final contract and are subject to changes desired by the purchaser, provided such alterations are interlined prior to the acceptance by the company of the order to purchase, and provided such alterations do not materially affect the cost of the construction of the apparatus.

The proposal for fire apparatus conforms with all Federal Department of Transportation (DOT) rules and regulations in effect at the time of bid, and with all National Fire Protection Association (NFPA) guidelines for Automotive Fire Apparatus as published at time of bid, except as modified by customer specifications. Any increased costs incurred by the first party because of future changes in or additions to said DOT or NFPA standards will be passed along to the customer as an addition to the price set forth above. Unless accepted within 30 days from date, the right is reserved to withdraw this proposition.

Respectfully Submitted.

South Coast Fire Equipment, Inc.

0 Sales Representative



NATIONAL CITY FIRE DEPARTMENT

100% Pre-Payment Option April 5, 2018

If a 100% pre-payment were made at contract signing, the following discount would be applied to the final invoice:

		Each	Extension
One (1) Pierce Arrow XT Pierce's Ultimate Configuration (PUC) pumper per the enclsoed proposal for delvery sum of	\$	663,465.00	\$ 663,465.00
100% Prepayment Discount	\$	(25,449.00)	\$ (25,449.00)
APPARATUS COST	\$	638,016.00	\$ 638,016.00
Sales Tax @ 7.750%	\$	49,446.24	\$ 49,446.24
Performance Bond	\$	1,990.40	\$ 1,990.40
California Tire Fee	\$	10.50	\$ 10.50
TOTAL PREPAY PURCHASE PRICE	\$	689,463.14	\$ 689,463.14
Less 100% pre-payment at Contract Signing	\$	689,463.14	\$ 689,463.14
DALANGE BUE AT BELLVEBY		ተለ ለለ	40.00

BALANCE DUE AT DELIVERY \$0.00 \$0.00

100% PRE-PAYMENT DISCOUNT SHOWN ABOVE IS AVAILABLE IN TWO WAYS:

- a) If your department makes a 100% cash pre-payment at contract signing.
- b) If your department signs up for a lease-purchase with Pierce Financial Solutions. This would require no money down and no payments for one (1) year if desired.
- * Discount for the 100% pre-payment option includes discounts for the chassis, interest, aerial (if applicable), and flooring charges.
- * Any item added after this option is elected will come at additional cost and will be added to the final invoice.

New Apparatus Equipment List

			R	.v.		189X	%
EQUIPMENT TYPE	TEM#	ANOUNT	VENDOR	₹% ⁰ 00°	Price	Extended	Nodel*
POLY SALVAGE COVER 12' X 18'					·	•	1
PUSH BROOM 18"		1	DIXIE LINE		\$30.00	\$30.00	
DECON BRUSH		1	DIXIE LINE		\$15.00	\$15.00	
ROUND SHOVEL		1	MES	#268	\$69.95	\$69.95	FFSHOSS38FSS
MCLEOD		1	MES	#268	\$82.95	\$82.95	MT48FSS
PULASKI		1	MES	#268	\$55.95	\$55.95	#38PE136
SQUARE SHOVEL		1	DIXIE LINE		\$20.00	\$20.00	
RUBBER BLADE SQUEEGEES		3	DARLEY	#288	\$120.00	\$360.00	BK193
AUTO CRIB AC-14		2					
500 WATT HALOGEN LIGHT		2	DIXIE LINE		\$50.00	\$100	
LOCK OUT KIT		1	MES	#498	\$200.00	\$200.00	100
BOLT CUTTERS		1	MES	#86	\$230.95	\$230.95	T988
1" TFT BUBBLE CUP		1	MES				DS1024BCP
1.5 " TFT BAIL		5	MES				F125FP
1.5" TFTV DUAL FORCE		5	MES				HMD-TOS
1.5" BUBBLECUP TFT		5	MES				F2095BC
PRO BAR HALLOGEN 30"		1	MES	# 591	\$325.00	\$325.00	8916
6' NEW YORK HOOK		1	MES		\$115	\$115	RH-6-FIREHOO
8' NEW YORK HOOK		1	MES		\$140	\$140	RH-8-FIREHOO
HYDRANT WRENCH WITH 2 UNIVERSAL SPANNERS AND BRACKE	Т	2	MES	#198	\$165.40	\$330.80	#01519000
WILDLAND PROGRESSIVE HOSE PACK		4	MES	#59	\$112.46	\$449.84	#HP200
TFT LDH INTAKE VALVE		2	MES				AB7NP-NX-PS
WILDLAND HOSE CLAMP		4	MES	#223	\$49.00	\$196	#HC-15
2 1/2" WYE TO 2 1/2"		1	MES	#205	\$245	\$245	#LWNL
2 1/2 TO 1 1/2 GATED WYE		2	MES	#223	\$192.00	\$384	#WV
2 1/2" GATE VALVE		2	MES	#205	\$310.00	\$620	#CHGV
4" DOUBLE MALE		1	MES				
4" DOUBLE FEMALE		1	MES				
2 1/2" DOUBLE MALE	_	2	MES		\$17.65	\$35.30	H36-25NH-25NH

2 1/2" TO 1 1/2" REDUCER 1/1/2" TO 1" REDUCER H2O EXTINGUISHER Co2 EXTINGUISHER PURPLE K DRY CHEM EXTINGUISHER HIGH RISE HOSE STRAP 3/8" SMOOTH BORE TIP BALL SHUT OFF VALVE TRUCK MOUNT FOR TFT CROSSFIRE MONITOR ON A 3" RISER TFT CROSSFIRE XFC-52 2 1/2" TO 4" INCREASER 2 1/2" TO 4" REDUCER 2 1/2" TO 4" REDUCER X TOOL CROW BAR BRACKET H2O WATER EXTINGUISHER CAN HARNESS AXE HANDLE BRACKET GAS CAN MOUNT BOLT CUTTER BRACKET QUICK MOUNTING PLATE BA BRACKET MISC. MOUNTING BRACKETS HANDLELOK COUPLING MOUNTS 1.5" COUPLING MOUNTS 4" REEL LITE BOOSTER HOSE MOBILE 800 MGZ RADIO MOBILE VHF RADIO VHF PORTABLE RADIO CHARGER	2 1/2" DOUBLE FEMALE	
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VHF PORTABLE RADIO CHARGER	MOBILE VHF RADIO	
	VHF PORTABLE RADIO	
800 MGZ PORTABI E RADIO CHARGER	VHF PORTABLE RADIO CHARGER	
300 MOZ I OTTABLE TABIO OHATOLIT	800 MGZ PORTABLE RADIO CHARGER	
800MGZ PORTABLE RADIO	800MGZ PORTABLE RADIO	

MES	#219	\$85.91	\$171.82	#53R2525
MES				
MES				
MES				
MES	#235	\$129.00	\$258	#240
MES	#234	\$400.00	\$400.00	#332
MES	#234	\$190.00	\$190.00	#A413
MES	#61	\$67.46	\$134.92	#HS100
MES				
MES	#222	\$129.00	\$258	SOV-SWPG-15NH
MES				
MES		\$3,675.00	\$3,675.00	#xfc-52
MES				
MES				
MES				
MES	#233	\$45.03	\$135.09	#700229
MES				
MES	#284	\$47.80	\$47.80	#CHR55Z01C
MES				
MES	#284	\$38.40	\$115.20	#ZSMA5201C
MES	#279	\$47.80	\$47.80	#QM-OSC-1
MES		\$47.80	\$47.80	#BCB
MES	#284	\$46.20	\$184.80	#QL48Z25C
MES				UN-6-30-3-F
MES	#283	\$36.95	\$369.50	#1004
MES				
MES				
MES				
MES		143.75	\$862.50	RL 10RB
Sub total			\$10,903.97	
			· · · · · · · · · · · · · · · · · · ·	

Shipping	?
8.75% Tax	\$954.10
TOTAL	\$11,858.07

The following page(s) contain the backup material for Agenda Item: Resolution of the City Council of the City of National City, waiving the formal bid process consistent with National City Municipal Code Section 2.60.260 regarding cooperative purchasing and authorizing the City (Buyer) to piggyback 1) the State of Califo

CITY OF NATIONAL CITY, CALIFORNIA COUNCIL AGENDA STATEMENT

MEETING DATE:

July 24, 2018

AGENDA ITEM NO.

ITEM TITLE:

Resolution of the City Council of the City of National City, waiving the formal bid process consistent with National City Municipal Code Section 2.60.260 regarding cooperative purchasing and authorizing the City (Buyer) to piggyback 1) the State of California Department of General Services Contract #1-18-23-14B to award the purchase and build-out of six (6) fully equipped police patrol vehicles to Folsom Lake Ford in an amount not to exceed \$363,109.38; 2) the County of San Diego Department of Purchasing and Contracting Contract #550743 to award the purchase of police radios for the new patrol vehicles to the Regional Communications System (RCS) vendor, Motorola Solutions, Inc., in an amount not to exceed \$27,729.91.

PREPARED BY: Ray Roberson, Management Analyst II

DEPARTMENT: Engineering/Public Works

PHONE: (619) 336-4583

APPROVED BY:

EXPLANATION:

See attached explanation.

FINANCIAL STATEMENT:

APPROVED

ACCOUNT NO.

APPROVED:

644-411-000-511-0000 (Equipment Replacement Reserve): \$390,839.29 \$405,000 is appropriated in the FY2019 budget for patrol vehicles.

ENVIRONMENTAL REVIEW:

N/A

ORDINANCE: INTRODUCTION:

FINAL ADOPTION:

STAFF RECOMMENDATION:

Adopt Resolution awarding the purchase and build-out of six (6) police patrol vehicles and radios for the National City Police Department.

BOARD / COMMISSION RECOMMENDATION:

N/A.

ATTACHMENTS:

- 1. Explanation
- 2. Proposals/Quotes
- 3. State of California Department of General Services contract 1-18-23-14B
- 4. San Diego County Department of Purchasing and Contracting RCS Contract #550743
- 5. Resolution

Explanation:

As part of the FY 2019 annual budget, City Council approved funding through the Equipment Replacement Reserve for the purchase of six (6) patrol vehicles for the National City Police Department. Staff seeks Council authority to waive the formal bid process consistent with National City Municipal Code Section 2.60.260 regarding cooperative purchasing and authorize the City (Buyer) to piggyback 1) the State of California Department of General Services Contract #1-18-23-14B to award the purchase and build-out of six (6) fully equipped police vehicles to Folsom Lake Ford in an amount not to exceed \$363,109.38; and 2) the County of San Diego Department of Purchasing and Contracting Contract #550743 to award the purchase of police radios for the new patrol vehicles to the Regional Communications System (RCS) vendor, Motorola Solutions, Inc., in an amount not to exceed \$27,729.91. Folsom Lake Ford will subcontract with Lehr Auto Electric & Emergency Equipment for the build-out and upfitting of the police department vehicles.

NCMC Section 2.60.260 provides authority to the purchasing agent to join with other public jurisdictions to take advantage of cooperative purchasing opportunities, including but not limited to any federal, state or local agency pricing program or structure that is determined by the purchasing agent to allow a procurement that is in the best interests of the City. The purchasing agent may buy directly from a vendor at a price established through competitive bidding by another public agency whose procedures have been determined by the purchasing agent to be in substantial compliance with the City's procurement procedures, irrespective of the contracting limits of that jurisdiction or agency, even if the City had not initially joined with that public agency in the cooperative purchase.

National City's purchasing staff has confirmed that both the State of California Department of General Services Contract #1-18-23-14B with Folsom Lake Ford as well as the County of San Diego Department of Purchasing and Contracting RCS Contract #550743 were competitively bid through a Request for Bid (RFB) and bid process, and that the respective procurement procedures are in substantial compliance with those of National City.

FOLSOW LAKE FORD

THE FORD SOURCE

12755 FOLSOM BLVD. • FOLSOM, CA 95630 • (916) 353-2000

2019 ORDER 14-16 WEEKS

FINAL ORDERS DUE 9/21/2018

BUILD IS ON FIRST COME BASIS

DANIEL A. RAIMONDI Fleet Director

PATROL

(916) 353-2000, Ext. 376 Tall Free 1-800-655-0556 Cell. (916) 825-1622 Fax (916) 353-2078

7/11/2018

K8A	4DR	AWD	POLICE	
	.112	2.6"	WB	

UM AGATE BLACK

9 CLTH BKTS/VNL R

W EBONY BLACK

500A EQUIP GRP
PREM SINGLE CD

99R .3.7L V6 TIVCT

44C .6-SPD AUTO TRAN

16D BADGE DELETE

17T CARGO DOME LAMP

18W RR WINDOW DEL

21L FRONT AUX LIGHT

423 CAL EN NOT REQU

43D COURTESY DISABL 51S DUAL LED LAMPS

53M SYNC SYSTEM

55B BLIND SPOT INFO

59B KEY CODE 1284X

60R NOISE SUPPRESS

66A FRONT HDLMP PKG .GRILL WIRING

-68G RR DR/LK INOP

76R REVERSE SENSING

87R RR VIEW MIR/CAM

90E LH/RH PNLS III

92R SOLAR TINT 2ND

936 CAL SER VEH EXP FLEX-FUEL

153 FRT LICENSE BKT

\$34,460.00

\$20,836.07 LEHR UP FIT

\$55,296.07

\$ 4,838.41 TAX @ 8.75%

\$ 8.75 CA TIRE FEE.

\$60,143,23

\$ 375.00 SHIPPING

\$60,518.23 DELIVERED

LESS \$500.00 DISCOUNT 20 DAY PAYMENT

INCLUDES PAINTED WHITE ROOF AND 4 DOORS

REGISTRATION

6/11/2018

2019 POLICE INTERCEPTOR UTILITY

PROPRETARY

CONTRACT 1-18-23-14B

EQUIPMENT GROUP

SELECT OPTIONS

CONTRACT 1-18-23-14B LWOIF WILLIAM GROUP	Q	ELECT OPTIONS	
Police Interceptor Utility AWD (Incl. D&D)	KBA	S	T
3.7L V6 Ti-VCT FFV with 6-Speed Automatic Transmission	99R / 44C	S	******
3.5L V6 EcoBoost8 (131mph Top Speed)	99T / 44C	\$3,568.00	1
500/2015/17 (\$00)8			
Interfor Upgrade Package "1" and 2" Row Carpet Floor Covering "Cloth Sests - Rear "Center Floor Console (sest shifter witunique Police console finish plate - Includes Console "Top Plate - Finish 3 (Incl. 2 cup holders) - Floor Mats, front and resr (carpeted) Deletes the standard console mounting plate (85D) Note: Not available with opsons: 873, 874, 874, 858, 98W, 96T	esu	\$408.00	
Front Headsmp / Police Interceptor Housing Only — Pre-drilled hole for side marker police use, does not include LED installed lights (eliminates need to drill housing assemblies) — Pre-molded side warning LED holes with standard sealed capability (does not include LED installed lights) Note: Not available with options: 88A and 67H	68P	\$131.00	
Front Headlemp Lighting Solution includes base LED Low beam/Incandescent (Halogen) High beam headlamp with High Beam Wig-wag function and two (2) white rectangular LED side warning lights Includes pre-wire for grille LED lights, siren and speaker (60A) Wiring, LED lights included. Controller "not" included Note: Not available with cotion: 67H Note: Recommend using Cargo Wiring Light Package (67G) or Utimate Wiring Package (67U)	REA	\$890.00	
Tail Lamp / Police Interceptor Housing Only — Pre-existing holes with standard twist lock sealed capability (does not include LED installed lights) (eliminates need to drill housing assemblies) Note: Not available with options: 658 and 67H	BET	\$64.00	
Talf Lamp Lighting Sciution — Includes base LED lights plus two (2) rear integrated hemispheric lighthead white LED side warning lights in talliamps — LED lights only. Wiring, controller "not" included Note: Not available with option: 67H Note: Not available with option: 67H Note: Recommend using Cargo Wiring Light Package (67G) or Utilimate Wiring Package (67U)	668	\$444:00	
Rear Lighting Solution Includes two (2) beacklit flashing linear high-intensity LED lights (driver's skie red / passenger skie blue) mounted to inside liftgate glass Includes two (2) beacklit flashing linear high-intensity LED lights (driver's skie red / Passenger skie blue) installed en inside lip of liftgate (lights activate when liftgate is open) LED lights enly. Wiring, controller "not" included Note: Not avsisable with option: 87H Note: LED lights only—does "not" include wiring or controller Note: Recommend using Cargo Wiring Light Package (67G) or Ultimate Wiring Package (67U)	. 98 C	\$476.00	
Cargo Wiring Upfit Package Rear console plate (85R) — contours through 2 rd row; channel for wiring Wiring overlay harness with lighting and siren interface connections Vehicle Engine Harness: Two (2) light connectors — supports up to six (6) LED lights (engine compartment) Two (2) grite light connectors One (1) 10-amp siren/speaker circuit (engine to cargo area) Whelen Lighting PCCSR Control Head Whelen Lighting PCCSR Control Head Whelen PCCSR Light Helay Center (mounted behind 2 rd row seat) Light Controller / Flalay Center Wiring (jumper harness) Whelen Specific Cable (console to cargo area) Connects PCCSR to Control Head Pre-wiring for grille LED lights, stren and speaker (60A) Doss "not" include LED lights O Recomment Police Wire Harness Connector Kits 47C and 21P Note: Not available with options: 65U, 87H and 87U	67G	\$1,399.00	
Ready for the Road Package: All-In Complete Package – Includes Police Interceptor Packages: 66A, 66B, 68C, pluss - Whelen Cencom Light Controller Head with dimmable backlight - Whelen Cencom Relay Center / Siren / Amp wTraffic Advisor (mounted behind 2 nd row seat) - Light Controller / Relay Cencom Wiring (wiring hamses) w/additional input/output pighalls - High current pighall - Whelen Specific WECAN Cable (console to cargo area) connects Cencom to Control Head - Pre-wiring for grille LED lights, siren and speaker (60A) - Rear console plats (65FI) — contours through 2 nd row; channel for wiring - Grille linear LED Lights (Red / Blue) and harness - 100-Watt Stren / Speaker - Hidden Door-Lock Plunger / Rear-Door Handles Inoperable (52P) Note: Not available with options: 66A, 68B, 68D, 67G, 67U and 65U	67H	\$3,568.00	

ſ	2019 POLICE INTERCEPTOR UTILITY		PROPRE	
ı	O/11/2010	•		·
[CONTRACT .1-18-23-14B EQUIPMENT GROUP	2 12 M 12 E K	SELECT OPTIONS	Y
THE CHARLES COMMISSION OF THE PERSON OF THE	Ultimate Wiring Package Includes the following: - Rear console mounting plate (85R) — contours through 2 rd row; channel for wiring - Pre-wiring for grille LED lights, sinen and speaker (60A) - Wiring hamess I/P to rear cargo area (overlay) o Two (2) light cables — supports up to six (8) LED lights (engine comparament/grille) o One (1) 10-amp siren/speaker circuit engine cargo area - Rear hatch/cargo area wiring — supports up to six (8) ser LED lights - Does "not" include LED lights, side connectors or controller o Recommend Police Wire Hamess Connectors (8)s 47C and 21 P Note: Not available with options: 65U, 67H	67 U	.\$576.00	
	Police Wire Harness Cornector KR Front For connectivity to Ford PI Package solutions includes; (2) Male 4-pin connectors for siren (5) Female 4-pin connectors for lighting/siren/speaker (1) 4-pin IP connector for speakers (1) 4-pin IP connector for siren controller connectivity (1) 8-pin sealed connector (1) 14-pin IP connector Note: See Upfitters guide for further detail www.fordpoliceInterceptorupfit.com	47C	\$110.00	
	Police Wire Harness Cannecter Kit Rear For connectivity to Ford PI Package solutions Includes: (1) 2-pin connector for rear lighting (1) 2-pin connectors (6) Female 4-pin connectors (6) Male 4 pin connectors (1) 10-pin connectors Note: See Uplitters guide for further detail www.fordpolicainterceptoragiit.com	219	\$135.00	
	RSY EXTERIOR OF FIGHT	41H	\$05.00	
	License Plate Bracket Front	153	\$95.00 NC	
ı	Exercise Fland Separat - Front			
П	Auto Headlamp	ec.	\$120.00	
	Dark Car Feature – Courtesy lamps disabled when any door is opened. Note: Not available with Daylime Running Lamps (842)	43D	CONTRACT	
A CONTRACTOR OF THE	Note: Not available with Degame Huming Lamps (842) Police Silent Mode - When activated, courtesy lamps and Daytime Flunning Lamps disabled (user configurable) Note: Daytime Running Lamps do not disable where required by law Note: Requires Daytime Running Lamps (942)	431.	\$21.00	
	Daytime Runsing Lamps	942	\$46.00	
	Dome Lamp - Red/White in Cargo Area	177	\$54.00	
I	Front Warning Audiliary LED Lights (Driver side – Red / Passanger side – Blue)	21L	\$577.00	
1	Note: Requires 60A		\$077.UU	
	Forward Indicator Pocket Warning LED Lights - Warn, Park, Turn (Driver side - Red / Passenger sids - Blue) Nets: Requires 80A	21W	\$668.00	
	Front Interior Visor Light Bar (LED) —Super low-profile warning LED light bar fully integrated into the top of the windshield near the headliner. (Red/Red or Blue/Blue operation. White "take down" and "scene" capabilities) Note: Requires Rear Console Plate (BSR), Not available with Interior Upgrade Package (65U)	96W	\$1,165.00	
	Pre-wiring for grille LED lights, siten and speaker \$54.00 Rear Quarter Glass Side Marker LED Lights (Driver side Red / Passenger side Blue)	ECA .	/ P-66A / P-67G / P-67H / I \$601.00	7-67U
	Rear Cuarrer Crass Side Marrier (LED Lights (Universide - Fied / Fassesiger side - Entre) Rear Spoiler Traffic Warning Lights (LED) - Fully integrated in rear spoiler for enhanced visibility - Frovides red/blue/amber directional lighting Note: Requires Rear Console Plate (65R). Not available with interior Upgrade Package (65U)	63L 96T	\$1,463.00	
distance of the latest of the	Side Marker LED — Sideview Mirrors (Driver side — Red / Passenger side — Blue) — Located on backside of exterior mirror housing — LED lights only. Wiring, controller "not" included. Note: Requires 80A Note: Recommend using Cargo Wiring Uplit Package (67G), Ready for the Road Package (67H) or Ultimate Wiring Package (67U)	638	\$304.00	
	Spot Lamp Prep Kit, Driver Side Note: Does not include spot kimp housing and builb	51P	\$145.00	
I	Soot Larres Proc Kit. Dusi Side	stw	*************************************	
L	Note: Does not include spea lamp housing and bulbs		\$293.00	
ľ	Driver Only	SIV	\$224.00	2000
ŀ	Dual (driver and passenger)	51Z	CONTRACT	
1	The Land Call State			
ľ	Driver Only (Unity)	51R	\$413.00	
	,			

BASE PRICE \$30,994.65

6/11/2018 2019 POLICE INTERCEPTOR UTILIT	y Ding	DE PRICE .\$30,994	-	
EQUIDMENT ODOLO			ETARY	
CONTRACT 1-18-23-14B EQUIPMENT GROUP		SELECT OPTIONS		
Driver Only (Whelen)	SiT	\$439.00		
Dual (driver and passenger) (Unity)	518	\$648.00		
Dual (driver and passenger) (Whelen)	51V	\$695.00	 	
			1000	
Glass - Solar Tent 2 nd Row, Rear Quarter and Liftgate Window (Deletes Privacy Glass)	92G	\$125.00	1	
Glass Solar Tint 2 nd Row Ordy, Privacy Glass on Flear Quarter and Liftgate Window	928	\$89.00	1	
Roof Rack Side Ralls - Black Deflector Plate (Standard on EcoBoost® engine)	692	\$163.00 ,		
The control of the co	76D	\$350.00	CHINA CONT	
Two-Tone Vinyl Package #1				
Reof Vinvi		34. do mar	1	
RIH/LH Front-Doors Viny! RIH/LH Rear-Doors Viny!	91A	\$877.00	ļ	
White (YZ) Onty			ŀ	
Note: Not available with the following options: 91C, 91D, 91E, 91F, 91G, 91H, 91J	ļ.		<u> </u>	
Two-Tone Vinyl Package #3 • Roof Vinyl		A700 00	1	
FIH/LH Front-Doors Only Viny!	91C	\$732.00	Ì	
White (YZ) Only Note: Not available with the following options: 91A, 91D, 91E, 91F, 91G, 91H, 91J		der anager, er er er	l.	
Two-Tone Viryl - Roof	 	<u> </u>	<u> </u>	
Ricci Vinyl White Only	91H		ŀ	
Note: Not available with the following options: 91A, 91C		\$513.00	•	
Two-Tone Vinyi - RIVLH Front-Doors		1	 	
White Only Note: Not available with the following options: 91A, 91C, 91D, 91E, 91F, 91G	91J	\$319.00		
Vinyi Word Wrap POLICE "non-reflective"		\$3 13.UU		
White IVZI lettering located on I HIRM sides of unbide	910	P094-00		
Note: Not available with the following options: \$1A, \$1C, \$1E, \$1F, \$1G, \$1J	<u> </u>	\$831.00		
Vinyl Word Wrap - POLICE "reflective" Black lettering located on LIVRH sides of vehicle	91E	a see		
Black lettering located on LHRH sides of vehicle Nate: Not available with the following aptions: 91A, 91C, 91D, 91F, 91G, 91J		\$831.00		
Vinyl Word Wrap - POLICE "reflective" • White lettering located on LH/RH sides of vehicle	60.0°F			
Note: Not avellable with the following options: 91A, 91C, 91D, 91E, 91G, 91J	91F	\$831:00		
Vinyl Word Wrap - SHERIFF "non-reflective"	*****************			
White lettering located on LH/RH sides of vehicle Note: Not available with the following options: 91A, 91C, 91D, 91E, 91F, 91J	91G	\$831.00		
		ΨΟΟ1.ΟΟ	30707033	
Wheel Covers (18" Full Face Wheel Cover) Note: Only available with the standard Police wheel, not available with 64E				
	65L	\$64.00		
18" Painted Akuminum Wheel Note: Spare wheel is an 18" conventional (Police) black steel wheel	64 <u>#</u>	\$476.00		
	e de la companya de l			
Rear View Camera (Includes Electrochronic Rear View Mirror - Video is displayed in rear view mirror)	100000000000000000000000000000000000000			
Nets: This option would replace the camera that comes standard in the 4" center stack area. Note: Camera can only be displayed in the 4" center stack (std) "CR" the rear view mirror (87R)	87R	NG ~	:	
SYNO® Basic (Voice-Activated Communication System) - Includes single USB port and single auxiliary		***************************************		
audio input jack	5314	\$308.00		
Remappable (4) switches on steering wheel (less SYNOB)	61R	\$163.00		
Remappable (4) switches on steering wheel (with SYNC®)	618	\$163.00		
Hidden Door-Lock Plunger willeardsor handles operable	52H	\$\$145.00 i	and the P	
Hidden Door-Lock Plunger wifear-door handles inoperable	52P	\$168.00 J/P-67H		
Rear-Door Handles Inoperable / Locks Operable Rear-Door Handles Inoperable / Locks Inoperable	60L	\$36.00		
Rear-Door Handles Imperente / Locks Inoperable: Global Lock / Unlock feature (Door-panel switches will lock/unlock all doors and rear liftgate. Eliminates	68G	\$36.00		
overhead console liftgate unlock switch and 45 second timer. Also eliminates the blue liftgate release	16D		- 1	
button if ordered with Remote Keyless)		NG		
Windows - Rear-window power datete, operable from front driver side switches	18W	\$26.00		
1 st and 2 nd row carpet floor covering (includes floor mals, front and rear)	16C	\$131.00 ./P-65U]	
2 nd Row Cloth Seats	88 F	\$64.00 a-/P-65U		
Power passenger seat (6-way) w/manual recline and lumbar	87P	\$340.00		
Options 68L, 68G, 52H and 62P not available in any combination				

6/11/2018 2019 POLICE INTERCEPTOR UTILIT	Y	PROPE	ETARY
CONTRACT 1-18-23-14B EQUIPMENT GROUP		SELECT OPTIONS	V
Front Console Piste - Delete Note: Not available with option: 87G, 67H, 97U, 85R	95D	NC / P-65U	
Rear Console Plate Note: Not available with option: 65U, 85D	8671	\$36.00 P-67Q / P-67H / P	-67U
	ang di semperat		
Keyed Alike - 1435x	SAE	\$54.00	
Keyed Alike - 1284x	#19	\$54.00	
Keyed Alike 0135x	59D	\$54.00	***************************************
Keyed Alike - 0576x	##	\$54.00	
Keyed Alke - 1111x	553	\$54.00	1
Keyed Alike - 1294x	59C	\$54.00	
Keyed Alike - 0151x	59G	\$54.00	
Ballistic Door-Panels (Level III) - Driver Front-Door Only ²	900	\$1,657.Q0	
Ballistic Door-Panels (Level III) - Driver & Pass Front-Doors ²	90E	CONTRACT	1
Ballistic Door-Panels (Level IV+) - Driver Front-Door Only ⁸	90F	\$2,523.00	-
Ballistic Door-Panels (Level (V+) - Driver & Pass Front-Door Only	90G	\$5,047.00	
BLIS® Blind Spot Monitoring with Cross-traffic Alert (Requires 54Z) Note: Includes manual fold-swey mirrors, wheat, we memory, w/o puddle tamps	559/542	\$569.00	
Lockable Gas Cap for Easy Fuel® Capless Fuel-Filler	19L	\$21.00	
Mirrors Heated Sideview Note: Not required when ordering BLIS® (heated mirror is inkcuded with BLIS®)	549	\$64.00	rod mas shina a a a a a a a a a a a a a a a a a a
Perimeter Arti-Theft Alarm	593	\$125. 0 0	
Police Engine idle feature — This feature allows you to leave the engine running and prevents your vehicle from unauthorized use when outside of your vehicle. Allows the key to be removed from ignition while vehicle remains idling.	47A	\$273.00	
Remote Keyless-Entry Key Fob (w/o Keypad, less PATS) — (includes 4-key fobs) Note: Available with Keyed Alike, however, key fobs are 'not' fobbed alike when ordered with Keyad-Alike	55F	\$354,00	
Reverse Sensing	76R		
Aux Air Conditioning Note: Not available with Cargo Storage Vauit (63V)	17A	\$637.00	
Badge Delate - Deletes the "Police Interceptor" badging on rear liftgete - Deletes the "Interceptor" badging on front hood (EcoBoost®)	160	NC	
Gargo Storage Vault (includes lockable door and compartment light) Note: Not available with Aux Air Conditioning (17A)	63V	\$255.00	
Scuff Guards Protective wrap edging located on front edge of both rear-doors	550	\$74.00	
My Speed Fleet Management — Allows dealer or fleet administrator to kneer the maximum vehicle speed and the maximum audio system volume using a Ford authorized IDS diagnostic service tool — Allows the VMAX speed to be set in Smph increments (between 90 — 131 mph) Note: See Uplitter's Guide for further detail <u>www.fortpoliceInterceptiousfil.com</u>	486	\$64.00	
Noise Suppression Bonds (Ground Straps)	60R	CONTRACT	
Enhanced PTU Cooler — Power Transfer Unit — Recommended Usage: EVCIC Training: Continuous / Extended Track Usage Note: This PTU Cooler is not required for day to day patrol usage Note: Requires the 3.5L V6 EcoBoost® Engine (991)	529	\$3,057.00	
100 Watt Stren/Speaker (includes bracket and pigtall)	18X	\$314.00. /P-67H	
	المستبتنين		<u></u>

Tested and meets the requirements of NLI Standard 0108.01 Level III: *7.62 x 51 mm 9.7g M80 (.308 Windhester 150gr)
Per LAPD requirements, they're also designed to withstand opedial ithreat rounds: *7.62 x 29 mm MSC 7.8g (Type 56) *5.66 x 45 mm M193 3.38g *5.56 x 45 mm M855 4g

³ Tested and meets the requirements of NU Standard 0108.01 Level IV:

• .80-06 M2 AP 168gr (7.62 x 63 APM2 10.8g)
Destined to withstand special threat rounds:

• 7.62 x 54R LPS 9.85g

• 7.62 x 54R LPS 9.85g

• 7.62 x 51 mm M81 9.75g (.308 Winchester 150.5gr)
In addition, Level IV+ includes all of the NU Level III and LAPD rounds listed in footnate 2.

4707 Northgate Blvd Sacramento, CA 95834

Phone: 916-646-6626 Fax: 916-646-6656

Folsom Lake Ford

12755 Folsom Blvd

Folsom, CA 95630

Tammy

Phone:

Sales Quote

Page: 1

Quote Number:

12668

Document Date:

7/1/2018

Terms:

Net 30

Payment Method:

Ship Folsom Lake Ford

To: Tamniy

12755 Folsom Blvd

Folsom, CA 95630

Phone:

Ship Via

Sell

To:

Installation Lehr - Sacramento

Customer ID: SalesPerson

15075

Mike McGee

Location: Blanket PO:

Vehicle Information:

2019 FORD UTILITY, Unit	NATUCITY				
item No.	Description	Category	Quantity	Unit Price	Total Price
	Referred to invoice No. 5/14733:				
	Quote Requested by Tony Gaut				
3K2019ITU16	PB450L4 IONS	SETINALTP	1	726.00	726.00
SA315P	SIREN SPEÄKER	WHELEN	1	205.00	205.00
SAK51	SPEAKER BRACKET	WHELEN	1	28.00	28,00
W8RRBB	LIBERTY II	WHELEN	1	1,650,00	1,650.00
STPKT83	· STRAP KIT	WHELEN	1		
VTX609R	VERTEX RED	WHELEN	1	78,00	78.00
VTX609B	VERTEX BLUE	WHELEN	1	78.00	78.00
IONR	ION LED RED	WHELEN	1	126,00	126.00
IONB	ION LED BLUE	WHELEN	i	126.00	126.00
IONGROM	ION GROMMET MNT	WHELEN	2	5.01	10.02
CCSRNTA3	CENCOM SAFFHIRE	WHELEN	1	625.00	625.00
GK11191B1SSSCA	GUN RACK 1B1S	SETINA	1	729.00	729.00
C-VS-1400-INUT	UTILITY CONSOLE	HAVIS	7	231.00	231.00
C-E815-HLN-1P	PACE PLATE 1 PC	HAVIS	1		
C-EB40-CC5-1P	FACE PLATE 1 PC	HAVIS	1		
C-FP-2	PLT,2MS,	HAVIS	1		
C-FP-1	PLT,1MS,	HAVIS	1		
C-SM-800	CON,SM,8TMS,0DG	HAVIS	1	109.21	109:21
C-CUP2-I	CON,ACSY,CUPHLD	HAVIS	٦	35,28	35.20
MMSU-1	MAGNETIC MIC KT	MAGMIC	2	28.50	57.00
14,0553	3 ACC P/S	ABLE2	1	25.32	25.37
C-HDM-153	FLOOR MOUNT	HAVIS	1	91.56	91.5
C-HDM-202	POLE, TELE, HDM, 8	HÄVIS	1	133.56	133.5
C-HDM-401	SUPPORT BRACE	HAVIS	1	54.60	54.6
4101	DOCK MASTER	COPELAND	1	190,00	190.0
NMO-K-DS	COAX CABLE	RADIO	1	18.50	18.5
TRAB8063	PHANTOM LOW PRO	RADIO	1	41.00	41.0
25007	SL20XP:W/DC	STRMLIGH	1	99.66	99.6
DECALS	Decaf Materials	OTHER	1	385.00	385.0
	CF31 DOCK SGL	HAVI\$	1	745.00	745.0
DS-PAN-111-1	f - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 -		- 1	171.86	171.8
4	**		1		75.0
LPS-104 AP-GPS30-W-S2-9	CF31 POWER SPLY GPS ONLY ANT	HAVIS RADIO	•	171.86 75.00	



Sales Quote

Page: 2

4707 Northgate Blvd Sacramento, CA 95834 Phone: 916-646-6626 Fax: 916-646-6656

Quote Number: Document Date:

12668 18/28/2002/8 Net 30

Terms:

Payment Method:

Folsom Lake Ford Sell

:Tan1my To:

12755 Folsom Blvd Folsom, CA 95630

Phone:

Ship Folsom Lake Ford

To: Tammy

12755 Folsom Blvd Folsom, CA 95630

Phone:

Ship Via

Installation

Location:

Lehr - Sacramento

Blanket PO:

Customer ID: SalesPerson

15075

Mike McGee

Vehicle Information:

2019 FORD UTILITY, Unit: NATL CITY

Item No.	Description	Category	Quantity	Unit Price	Total Price
03-0211	UTIL HRNS FRONT	PATROLPO	1	595.00	595.00
C-ARM-101	ARM REST	HAVIS	1	65,96	65,96
PK0715ITU12TMSCA	8V\$ RP 75/25	\$ETINA	1	699,00	699.00
QK0634ITU12	CONTOUR SEAT	SETINA	1	639.20	639,20
WK0514ITU12	WINDOW GUARDS	SETINA	1	167.20	167,20
PK0316ITU122ND	12VS LEXAN PART	SETINA	1	351.20	351.20
TK02411TU12	CARGO BOX	SETINA	1	959,20	959.20
TPA9289	LOWER RADIO TRY	SETINA	1	285.60	285.60
WK0040ITU12	REAR WINDOW SET	SETINA	1	268.00	268.00
TK0476ITU12	CARGO DECK&TRAY	SETINA	1	412,00	412.00
C-MD-119	11" SLIDE ARM	HAVIS	1	264.50	264.50
B4102T	5 LB, FIRE EXT	MISC	1	85.00	85.00
C-FP-4	PLT,4MS,	HAVIS	1		
C-EB25-XTL-1P	FACE PLATE 1 PC	HAVIS	1		
G	Graphics installation	OTHER	1	195.00	195.00
Ī	INSTALLATION CHARGES	LASOR	1	2,995,00	2,995.00
CF-BAZ1504	4GB RAM	PANASONI	1	107.00	107.00
CF-3117315KM	CF-31 LAPTOP	PANASONI	1	5,410.00	5,410.00
CF-K31HD5032	500HDD 7200RPM	PANASONI	1	162.00	162,00
C-EB25-MA5-12	FACE PLATE 1 PC	HAVIS	1		
C-AP-0325	CON,ACSY,BOX,IM	HAVIS	1	38,64	38,64
PKILLMAG	Siren Park Kill	LEHR	1	42.00	42.00
F	Shipping Charges	OTHER	1	250.00	250.00

Amount Subject to Sales Tax Amount Exempt from Sales Tax

20,836.07

Subtotal: Total Sales Tax: \$20,836.07 \$0.00

Total:

\$20,836.07

d Red/White Dome Lamp

Red/Write Dome Lamp is now LED.

Note: This action was implemented on 2016 Police Interceptors models in late Nov/Dec 2015









Power Distribution Lug

Back side of 2nd row seat. (pass, side.)

> Backside of 2nd raw seat (driver side.)

PDL (ogated under Boor panel access

Cargoarez Rooring

Standard Equipment

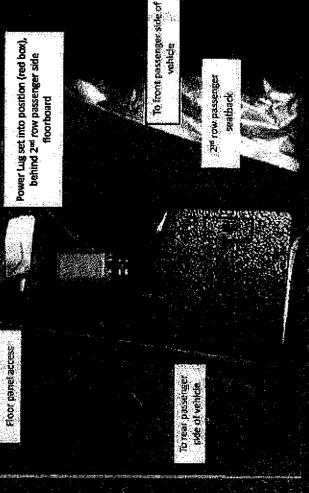
Power Distribution Lug

The Power Distribution Lug has been repositioned to allow easier access for upitting.

- Previous location was on passenger side rear cargo area.

 behind fender wall
- New location is now behind. 2nd row passenger side floorboard.
- Standard Police feature
- Police Inferceptor Utility Only

Note: This action was implemented on 2016 Police Interceptor Utility models in late Nov/Dec 2015



Slandard Eguipment

ndiramoni estara proposad jaj indo optopojaj vojantišu neo slejest ja jajoso indo ovak ಗಳಗುಗಳು ಕ್ಷಗಿಸಿಕಗಳ ಕ್ಷಾಗೆಗೆ ಭಾರತಕ್ಷದ ಕರಗಳ ಗುಣ್ಣದೇ ಗಿರುದುಗೂತ್ತು. ನಿಶ್ವಕ್ಷದ ನಿರ್ವ

RE/SILENT MODE 2017MY DARK C

Silent Mode Select In Cluster Setting

Convenience

Fig. Locks

Cal Life Reset

Cal Silent Mode

10123.0 mi

U S C U

llent Mode Cortion Code.

SURE/SILENT MODE 2017MY DARK CA

2016RX

Base Police Functionality (configured 100% std.)

No Locking Hörn Feedback No Locking Light Feedback

No Un-Locking Light Feedback

Dark Car Feature (when ordered)

Courtesy Lighis OFF Welcome/Farewell OFF

Ability To Turn OFF Cluster/Center Stack Lighting Via Dimmer Switch

Daytime Running Lights Always On

2017NNY

Base Police Functionality (configured 100% ತಡೆ))

No Locking Horn Feedback

No Locking Light Feedback No Un-Locking Light Feedback

If DRLs not ordered: No change vs. 2016MY

If DRLs ordered: May order Silent Mode only

Silent Mode (when enabled)

➤ Courtesy Lights OFF

Welcome/Farewell QFF

- Ability To Turn OFF Cluster/Center Stack Lighting Via-Dimmer Switch

/ DRISHOFF

CSilent Mode (ornen disabled)

Courtesy Lights ON

WelsomerParowall ON Ability To TumionE Clusien Lighting We Dimmer Swit

DRLS - ON





Ballistic Panel

lested and meets the requirements of NIJ Standard 0108.01 Level IV: .30-06 M2 AP 166gr (7.62 x 63 APM2 10.8g)

Designed to withstand special threat rounds: 7.62 x 54R LPS 9.65g

7.62 x,51 mm N61 9.75g (,308 Winchester 150.5gr)

In addition, Level IV includes all of the NIJ Level III and LAPD rounds listed below: Per LAPD requirements; they related designed to withstand special

Wrest rounds: - 7.62 x 39 mm MSC 7.9g (Type 56) - 5.56 x 45 mm M193 3.35g - 5.56 x 45mm M855 4g

2016WY Police Interceptors beginning Warch 15, 2016 This action was made available for production on Mote:

Levei IV: Driver Side 90F Level IV: DriveriPassenger Side 90G

Februes, polony and chechny comen space to Canee . Peace the Courticates of Camer can list word find that

rning Lights Front Interior Winds

(w.es)

76 of 338

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Varning Lights Front Interior W

Take on a stealth appearance with this low profile Front Inferior Windshield Warning Lights

- The interior visor light is a super low-profile warning light bar fully integrated into the top of the windshield
- New interior visor light to provide a cover feature for agency paint vehicles
 - Dark shade band at the top of the windshield is replaced by clear glass when the visor light is ordered, providing superior cofor visibility and brightness.
- The interior visor light comes with a limited warranty and maintains the spacious interior feet that many agencies love about the latest generation of Ford Police Interceptors
- When activated, the interfor visor light flashes bright, afternating red and blue bars on the top of the windshield and can be programmed for red/red or blue/blue operation
- The visor light also features bright white "take down" and 'scene" capebilities, which give excellent forward visibility, and can be set up to meet California Title 13 regulations.
 - to meet California Title 13 regulations. The visor light can also be programmed from full intensity down to 20% as needs distale.

NOTE: Police Interceptor Utility Only

Sption Code:

(10,000)

Police Eng

evelicie from unauthonzed use when outside of your vehicle. Allows the key to be removed from ignition while vehicle reniains idling. This feature allows you to leave the angine running and prevents yo

Switching the System On:

- With your vehicle running and the transmission in park (P) press the button on the instrument. panel. Awarning lamp liluminates to confirm the system is on
 - Switch the ignition off and remove the key.

When the system is on.

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- The power windows are disabled and the windows remain in their current state
- The power door locks are disabled and all doors remain in their current locking state. Note: The doors can be unlocked with the key blade
 - The liftgate or luggage compartment does not epen but can be opened with the key

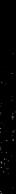
To Switch the System Off.

- The system can be switched "off" by doing any of the following:

 Inserting the key and switching the ignition to the run position.
- Note: If you switch the system off before switching the Ignition to the run pasition Pressing the button on the instrument panel. your vehicle shuis down

Орлюп Сосе (47A)

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QUOTE TO: National City Police - Graham Young - 619-336-4514

PREPARED BY: Andy Orderin 658-864-3660 parimm@daywireless.com

DATE: July 3, 2018

Quote Valid (hirough December 31, 2618 Quote # QU0800333555AG

<u> </u>				t lat balan	Unit Discounted		Tolal Extended Discount Price
*Line fl	Qiy i	Part Number	item Description Region Addition Additio	List Price			DISCOUNT PICE
1410881HI 010181	5.550 H25H		APX6500 7/800 MHZ MOBILE RADIO	\$2,438.00			
10	W22B		ADD: PALM MICROPHONE	\$72.00	\$45.00		
10	G8061	BE .	ENH: ASTRO DIGITAL CAI OP APX	\$515.08			
10	G442		ADD; O5 CONTROL HEAD	\$432,00		20. 27. St. 27. St.	· · · · · · · · · · · · · · · · · · ·
10 10	G67B	C	ADD: REMOTE MOUNT MID FOWER	\$297.00	\$185.63	colorati (Playsia)	
1e	G444		ADD: APX CONTROL HEAD SOFTWARE	\$0.00	\$0,00	Cipies Congress	,
	G361		ADD: P25 TRUNKING SOFTWARE	\$300.00	\$0,00	######################################	
	251A		ENH: SMARTZONE OPERATION APX6500	\$1,200.00		Variet (City)	444
	神神(病) G335		ADD: ANT 1/4 WAVE 762-870 MHZ	\$14,00	\$8,70		
11	海绵绵 B18C		ADD; AUXILIARY SPKR 7.5 WATT	\$80.00			
1	GA00		ADD: TOMA OPERATION (P25 PHASE 2)	\$450.00	\$201,20		
1k		235AA	ADDI NO GPS ANTENNA NEEDED	\$0.00	\$62.50	Cartarian can arrange	
11	G996		ADDI OVER THE AIR PROGRAMMING (OTAP)	\$100,00	\$112.50		
1m	W599	BF	ADD: 8 MODE DEK BOX	\$180.00	\$112,30	Aller and the second	
	History .		The second secon	Water and Care Sale Sale	ACCOMMONDATE OF THE	echemon metrocelistica	Switch Switch & Econes
ALCONOMIN.	35.6 G PARCE	eur mith <u>en en stei</u>	TOTALIAPX8500 MOBILE SINGLE OSHEAD CONTROL OF THE STATE O	Sala Aningo innianis	[6:49:43:59.00010	5 5 5 5	10001000000000000000000000000000000000
l	<u> </u>		27,740,000 to 100 to 10	· · · · · · · · · · · · · · · · · · ·	1	otal Equipment:	\$21,592,59
			•		8.75 % 1	ax on Equipment	\$1,889.35
					Total Eq	ulpment and Tax	\$23,481.91
·	r			· · · · · · · · · · · · · · · · · · ·			
3332 N	.6 G24A	X	3 Year Warranty Service from the Start	\$131.00	\$0.00		\$0.00
	1 SVC0		install new mobile radios in 6 new police vehicles ensite		\$4,248.00		\$4,248.00
1007 - 10 an e/11			and the state of t	Order Total	(Equipment, T	x. Warranty);	\$27,729.91

Discounted Pricing from San Diego County RC\$ Contract #553982. Shipping is included at No Charge. PO's must be made out to Motorola Solutions, INC (not Day Wireless).

LPA Contract Details

Contract ID 1-18-23-14B

Contract Type

Acquisition Type

Status

Statewide Contract

NON-IT Goods

Active

Description

Enforcement Vehicles, Police Pursuit

Supplier Name
FOLSOM LAKE FORD

Supplier ID

0000006908

Begin Date 06/07/2018

Expire Date

06/06/2020

Contract Administrator

Buyer

Email

Rudolph Jimenez

rudolph.jlmenez@dgs.ca.gov

Department

Phone

DGS - Statewide Procurement

Attachments

1-3 of 3

Attachment File

Attachment_1_-_Pricing_Worksheets.xlsx

Attachment_2b_-_Bid_Specs_2310-4444-Utility,_dated_41218.pdf

CUI_-_23-14_(A_B).pdf

Contract Line Items

1 of 1

item iD

Description

Unit UOM Price UNSPSC Description

MFG Name MFG Item ID

EPP/SABRC Status

See Attached Pricing

Worksheets

Each

25101702 Police vehicles

Active

https://caleprocure.ca.gov/PSRelay/ZZ_PO.ZZ_CTR_SUP_CMP.GBL?Page=ZZ_CTR_SUP_PG&Action=U&SETiD=STATE&CNTRCT_ID=1-18-23-14R

		GRO	SUP	GROUP 2 - UTILITY	LITY			
1-18-23-14B	FOLSOM LAKE FORD	FC	FORD UTILITY	LITY				
Contact Line Item # (CLIN)	Item Description	Unit of Measure (UOM)	Quantity in Unit of Measure	Manufacturer (OEM)	Model	Manufacurer (OEM) Part Number	SKU #/Item #	Contract Unit Price
201	Law Enforcement Utility Vehicle with Police Package in accordance with specification #2310-4444 dated 04/12/2018	Each	1	FORD	UTILITY	K8A	K8A	\$30,994.65
202	5yr. / 100,000 mi Extended Powertrain Warranty Utility Vehicle	Each	1	n/a	n/a	FOMOCO	NA	\$0.00
203	OPTIONAL BADGE DELETE: Manufacturer's nameplate(s) / badge(s) shall be removed from the vehicle on both front doors below the window belt molding and on the taligate. "After-factory" dealer nameplate / badge removal is acceptable if factory badge delete is unavailable from the manufacturer.	Each	-	n/a	n/a	16D	16D	\$0.00
205	BALLISTIC DOOR PANEL DELETE OPTION: Remove front driver and passenger door mounted ballistic panels.	Set	2	COORSTEK	NIJ LEVEL III	30E	30E	\$3,011.50
Segment ID/Group ID	Option Description	Unit of Measure	Quantity in Unit of Measure	Manufacturer (OEM)	Manufacture r Part Number	Contract Catalog Discount %*	Contract Unit Price	Contact Dealer for catalog.
	Keyed Alike Vehicles	SET	4 EA	FORD	PER-CODE		\$59.00	Only options listed on the Dealer's published
∢	Trailer Towing Package	EACH	1 EA	AFTER MKT	NA	%00.0	\$388.00	commercial price list (catalog) shall be available to the purchasing agencies and shall be
	Daytime Running Lights (DRL)	SET	2 EA	FORD	942		\$46.00	designated as Non-Core Options.



STATE OF CALIFORNIA BID SPECIFICATION UTILITY VEHICLE, LAW ENFORCEMENT HIGH SPEED POLICE PURSUIT

2310-4444

1.0 SCOPE:

This specification describes the State of California minimum requirements for an **all or rear wheel drive** utility vehicle to be used in high-speed highway traffic and general law enforcement work. The vehicle will at times be operated at speeds in excess of 100 miles per hour for both short and long durations. It will be driven on all types of roads, and road surfaces and at altitudes ranging from approximately 200 feet below sea level to 10,000 feet above sea level. Ambient temperatures to which the vehicle will be exposed will range from approximately 0°F to 120°F.

The manufacturer shall use components, materials and design practices that are the best available in the industry for the type of operational conditions to which the vehicles will be subjected. Engine, transmission, driveline, differential, brake, suspension, wheel, tire and other component parts of the vehicle shall be selected to give maximum performance, service life, as well as safety and not merely meet the minimum requirements of this specification. Where necessary, the component parts shall exceed the usual quantity, quality, or capacity generally supplied with standard production vehicles in order to withstand the unusual strain, exposure, temperature, wear and use required for a police application.

2.0 RULES AND REGULATIONS:

Vehicles shall comply with all applicable California Vehicle Code (CVC), Code of Federal Regulations, Title 49, "Federal Motor Vehicle Safety Standard" (FMVSS) and California Code of Regulations, Title 13, "Motor Vehicles" rules and regulations (except emissions regulations). Vehicles shall also comply with Society of Automotive Engineers (SAE) J 1100, "Motor Vehicle Dimensions" in addition to all other applicable SAE standards. In addition, all vehicles shall comply with all other Federal and State rules, regulations and safety standards applicable to the vehicle type in effect on the date of the opening of the invitation for bid. Vehicles shall meet 50 State emissions requirements that allow the resale of these vehicles to the general public as originally equipped upon emergency vehicle "service life" completion.

3.0 VEHICLE:

All vehicles offered in compliance with these specifications shall be the manufacturer's "Police Pursuit Utility Vehicle" rated model and shall be suitable for high-speed pursuit and emergency driving. All vehicles shall meet the following minimum specifications:

4.0 REQUIREMENTS:

- 4.1 General: Each vehicle shall be new (unused), current model year production. Each vehicle shall be supplied with all equipment and accessories indicated as standard equipment in the manufacturer's published literature unless specifically deleted as stated in this specification. Optional equipment necessary to meet the requirements of this specification shall also be installed.
- **Engine:** The engine shall be a manufacturer's "Police Package" configuration equipped with altitude compensating electronic fuel injection.

The engine shall have a displacement, to be determined by the manufacturer, sufficient so that all performance requirements described in Section 1.0, Scope and Section 4.25, Performance Requirements are achieved.

The engine shall be designed to operate knock free at all engine and vehicle speeds on unleaded fuel with a minimum octane rating of 87 (RM + MM \div 2).

- **Engine Oil Cooler:** An auxiliary engine oil cooler shall be installed if required to maintain oil operating temperatures ≤ 300°F, under operating conditions described in the Section 1 of this specification.
- **4.4 Fuel Supply System:** The fuel supply system shall be of such a design to eliminate vapor lock when the engine is operating in high ambient temperatures or during periods of extended idling.
- 4.5 Fuel Tank: The fuel tank furnished shall be the largest capacity available.
- 4.6 <u>Cooling System:</u> The cooling system shall be liquid pressurized, forced circulation type. The manufacturer shall provide the heaviest duty cooling system components and recovery system applicable to the model offered. The cooling system design and capacity shall maintain the engine at optimum temperature, under all operating conditions specified, without any loss of coolant or overheating of engine and components. The cooling system shall be free of contaminants that may affect cooling system component longevity and performance. Optimum engine temperature shall be maintained with the vehicle loaded to the vehicle manufacturer's published maximum gross vehicle weight rating (GVWR) and continually operated in all operating environments described within the scope of this specification.
- **Electrical System:** The electrical system shall be 12 volt negative ground. All wiring shall include weather proof connectors.

The vehicle battery shall be the optional heaviest duty type available, compatible with the vehicle charging system and intended for police service. The vehicle battery shall have a minimum of 700 cold cranking amps, with a manufacturing date not exceeding six (6) months prior to vehicle delivery. Vehicles will not be accepted with batteries exhibiting less than 90 percent of full charge at time of delivery.

The generator/alternator shall be the highest capacity optional generator/alternator listed in the manufacturer's current police package brochure applicable to the vehicle bid. It shall have a minimum 170 amp output.

- 4.8 <u>Transmission</u>: The transmission shall be fully automatic transmission equipped with auxiliary transmission fluid coolers, if necessary, to maintain oil operating temperatures not to exceed 275°F, maximum. Console or floor mounted shifters are acceptable, but must be capable of allowing the installation of CHP radio and equipment.
- **4.9 Brakes:** The brakes shall be power assisted and feature an anti-lock brake system (ABS). All four wheels shall be equipped with disc brakes. Friction material shall be designed for police applications.
- 4.10 Wheels and Tires: Each vehicle shall be supplied with five (5) matching wheels and tires. One (1) of the five (5) shall be a matching full size wheel and spare tire. A space saver type spare tire is not acceptable. The wheels shall have a safety ridge rolled into the rim or otherwise designed to prevent the tire from separating from the wheel in the event of a flat. Wheels shall be steel construction, designed for police applications. Lug nuts shall be covered with a center cap. Manufacturer's standard Tire Pressure Monitoring System shall be supplied. If a tire pressure activation tool is needed to reset the light on the tire pressure monitoring system, one tool shall be provided for each vehicle as part of this requirement.

The vehicle manufacturer shall test and certify tires as acceptable for original equipment and replacement installation on the police package vehicle specified in this invitation for bid.

Any wheel weights used shall be "non-lead" type.

- **4.11** Suspension: The front and rear suspension including shock absorbers shall be designed for police work. Front and rear stabilizer bars are required.
- **4.12** <u>Differential:</u> The differential shall be the conventional type, ring and pinion gears, with a ratio designed to give the best overall performance for the transmission and tire size installed on vehicle. The gear ratio shall be the same on all vehicles.
- **4.13** Radio Suppression: The system shall not cause or be affected by any electrical magnetic interference (EMI) or radio frequency interference (RFI) including but not limited to the following radio frequencies currently in use by CHP vehicles:
 - Low Band: 39 46 MHz Transmit and Receive
 - Repeaters: 153 -155 MHz Transmit and Receive
 - Radio, UHF 440 490 MHz Transmit and Receive
 - Allied Radio 806 870 MHz Transmit and Receive
 - Allied Radio 581 866 MHz Transmit and Receive
 - Allied Radio 159 173 MHz Transmit and Receive
 - Allied Radio 150 174 MHz Transmit and Receive
 - Radio / Repeater 764 806 MHz Transmit and Receive
 - Canines 26 28 MHz Receive
 - Canines 303.9 MHz Receive
 - Computers: 896-901 MHz Transmit, 935-940 MHz Receive
 - Canines: 303.875 MHz Receive

The system should not cause more than one (1) dB of radio degradation at the antenna whether it be radiated or conducted radio frequency interference (RFI), or electromagnetic interference (EMI). If the system causes any two or all three types of interference, the total combined allowable receiver degradation is 1 dB at all CHP frequencies.

See Exhibit 2 for radio degradation testing details.

4.14 Body: The body shall be a four door, sport utility with center post. Protective side molding shall not be installed on the vehicle. This is to permit installation of an Agency insignia (33" long by 20" high) without trim interference.

The wheel wells shall be constructed so that OEM approved tire chains or cables may be installed in a conventional manner, without clearance problems and without causing body or structural damage to the vehicle.

4.15 Exterior Color: The body shall be painted manufacturer's gloss black. The roof panel and lower portion of both front doors below the window belt line shall be painted manufacturer's gloss bright white. After-factory applied paint to accomplish the white portion of the two-tone paint scheme is acceptable if factory applied black and white two-tone paint configuration is unavailable from the manufacturer.

- 4.16 Interior/Seat Upholstery: Front seats shall be bucket type accommodating the installation of a center console by the end user. A 60/40 split bench / bucket type seat is not acceptable. The driver's seat shall be power adjustable and shall be designed for maximum comfort, support and durability. The front and rear seat shall be the manufacturer's standard cloth upholstery. (A vinyl rear set is acceptable provided the manufacturer warranties the vinyl seat material against sun and heat damage for not less than three (3) years.)
- 4.17 Speedometer: The vehicle described in this specification will be used in law enforcement and speedometer accuracy is essential. The speedometer shall be calibrated and be accurate within two (2) miles per hour at speeds from 15 to 100 miles per hour of the true vehicle speed, within the environmental operating conditions specified in Section 1.0 Scope. The dial face shall be marked up to a minimum of 140 miles per hour. The design of the speedometer shall be such to insure accuracy throughout the life of the vehicle. The face markings shall be in increments no greater than two (2) miles per hour. If the manufacturer has available a digital display speedometer, the vehicle shall be so equipped. A letter of certification of accuracy shall be provided with each unit and shall be applicable to both digital and analog displays. The bidder shall specify the size of tires for which the speedometer is certified. The speed indicator pointer shall not cover more than a two mile per hour section of the scale.
- **4.18** Payload: The vehicle shall have a minimum payload of 1500 lbs when configured in the standard Police Pursuit rated version.
- **4.19** Radio: Vehicle shall be factory equipped with the factory base radio and at least two (2) front mounted radio speakers and two (2) rear mounted radio speakers.
- 4.20 Spotlights: Factory installed A-Pillar incandescent spotlights with 2 wire handles.
- 4.21 <u>Hood-Latch Release:</u> The hood latch release shall be mounted inside the front passenger compartment so that the hood can not be readily opened from outside the vehicle. The release shall be readily accessible to the seated driver.
- **4.22 Floor Covering:** The floor covering of the front and rear floor may be standard rubber, vinyl or carpet. The color shall be keyed to the upholstery color. OEM floor mats shall be included for carpeted vehicles.
- **4.23** Interior Area: The Vehicle shall be equipped with 1st and 2nd row seats only, and shall have a seating capacity of minimum 5.
- **4.24** <u>Miscellaneous Equipment:</u> The vehicle shall be equipped with the following miscellaneous equipment:
 - · Backup camera with display
 - Reverse sensing
 - Heated driver and passenger mirrors
 - Tilt steering wheel
 - Fresh air type heater and defroster. Refrigeration air conditioning of a size and type recommended and installed by the manufacturer of the vehicle.
 - Intermittent windshield wiper system.
 - Fuel level and water temperature indicator gauges.
 - 12-volt DC power outlet in front compartment.

- Ballistic Door Panels (left front and right front doors), threat level 3 or better. (Door Panels shall meet and pass National Institute of Justice Certification level III test standards. Testing certification shall be provided upon request.)
- Cruise control
- Dual electric horns or dual note horn.
- Headlight wigwag capability.
- Map/dome/courtesy light(s) which provide the following functions:
 - When vehicle front doors are opened, none of the interior map/dome/courtesy light(s) shall illuminate automatically.
 - At least one map/dome/courtesy light (at both front and second row) that shall be manually operated to illuminate the seating areas.
- Quick release style driver's side inside door handle to allow the driver's door to be unlocked by pulling on the inside handle.
- Driver and front passenger front impact air bag.
- Driver and front passenger side impact air bag.
- All four (4) doors shall contain power locking and unlocking mechanisms controlled by switches located on the driver's side door control panel.
- All four windows shall be power actuated and controlled from the driver's side door control
 panel with a lockout feature to prevent other windows from being operated when locked out
 by the driver.
- · Rear window defogger/defroster on a separate switch.
- The vehicle shall use the same single key or fob for ignition, doors, rear, and glove box (if vehicle includes). A set of four (4) total keys or fobs shall be supplied for each vehicle. Each vehicle shall be keyed individually.
- Arm rests on each of the four (4) doors (arm rests in rear passenger compartment may be mounted on other than the door if vehicle is so designed).
- Left and right remote control outside mirrors. Similar in appearance and mounted on left and right front doors. Both mirrors shall be controllable from the driver's seat.
- · Windshield and all windows shall feature tinted glass.
- Light in rear cargo area with rear cargo door actuated switch.
- Standard tool kit including wheel changing tools and jack adequate to safely lift the vehicle.

4.25 Performance Requirements: See Exhibit 1 for testing methodology.

4.25.1 All vehicles shall meet the following Top Speed and Acceleration requirements:

- 0 to 60 miles per hour in 9.0 seconds or less.
- 0 to 100 miles per hour in 23.0 seconds or less.
- 50 to 100 miles per hour in 18.0 seconds or less.
- Attain a top speed of not less than 130 miles per hour within a distance of two (2) miles.
- 0 to 60 miles per hour in 11.0 seconds or less at approximately 5,500-6,000 feet of elevation.

4.25.2 All vehicles shall be tested for the following Vehicle Dynamics:

- Steering- Response, Road Feel
- Suspension- Roll Resistance, Front-end Dive, Rear-end Squat
- Handling- High-speed Curves, Medium-speed Curves, Tight Cornering, Predictability

4.25.3 All vehicles shall meet the following Braking requirements/tests.

ABS Braking:

- Full ABS stop from 90 MPH. Stopping distance shall not to exceed 325 feet
- · Vehicle stops in a straight line

Pursuit Course Testing:

- No Evidence of Excessive Brake Pedal Travel or Brake Fade
- · Braking System Provided Acceptable Stopping Power
- No Steering Pull or Wheel Lock-Up
- · No flame occurring within the test.

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Department of General Services Procurement Division 707 Third Street, 2nd Floor West Sacramento, CA 95605-2811

State of California

CONTRACT USER INSTRUCTIONS

**** MANDATORY ****

ISSUE AND	EFFECTIVE DATE: 6/7/2018
CONTRACT NUMBERS:	1-18-23-14A – Elk Grove Auto Group (Dodge Charger)
	1-18-23-14B – Folsom Lake Ford (Ford Sedan and Utility)
DESCRIPTION:	Enforcement Vehicles, Police Pursuit (SEDANS) and (UTILITIES)
CONTRACTOR(S):	Elk Grove Auto Group Folsom Lake Ford
CONTRACT TERM:	6/7/2018 through 6/6/2020
STATE CONTRACT ADMINISTRATOR:	Rudolph Jimenez (916) 375-4390 Rudolph.Jimenez@dgs.ca.gov

The contract user instructions, products, and pricing are included herein. All purchase documents issued under this contract incorporate the contract terms and applicable California General Provisions: (GSPD-401 Non-IT Commodities, rev 06/08/2010)

Cal eProcure link: www.caleprocure.ca.gov

UR	DER PLACEMENT INFORMA	
U.S. Mail	Fax/Email	Contact Information
Elk Grove Auto Group 8575 Laguna Grove Drive Elk Grove, CA 95757	(530) 884-4141 dwanefleet@hotmail.com	Dwane Galatti (916) 429-4702
Folsom Lake Ford 12755 Folsom Blvd Folsom, Ca 95630	(916) 353-2078 danr@folsomlakeford.com markp@folsomlakeford.com	Dan Raimondi (916) 353-2000 Ext. 376 Mark Paoli (916) 353-2000 Ext. 307

ORIGINAL SIGNATURE ON FILE	6/7/2018
Rudolph Jimenez, Contract Administrator (CA)	Date:

Contract User Instructions

1. SCOPE

The State's contract with Elk Grove Auto Group and Folsom Lake Ford provides Enforcement Vehicles, Police Pursuit (Sedans) and (Utilities) at contracted pricing to the State of California and local governmental agencies in accordance with the requirements of Contract # 1-18-23-14 (A, B). The contractor shall supply the entire portfolio of products as identified in the contract and will be the primary point of contact for data collection, reporting, and distribution of Enforcement Vehicles, Police Pursuit (Sedans) and (Utilities) to the State.

The contract term is for two (2) years with an option to extend the contract for two (2) additional one (1) year period or portion thereof. The terms, conditions, and prices for the contract extension option shall be by mutual agreement between the contractor and the State. If a mutual agreement cannot be met the contract may be terminated at the end of the current contract term.

2. CONTRACT USAGE/RULES

A. State Departments

- The use of this contract is mandatory for all State of California departments
- Ordering departments must adhere to all applicable State laws, regulations, policies, best practices, and purchasing authority requirements, e.g. California Codes, Code of Regulations, State Administrative Manual, Management Memos, and State Contracting Manual Volume 2 and 3, as applicable.
- Prior to placing orders against this contract, departments must have been granted non-IT purchasing authority by the Department of General Services, Procurement Division (DGS/PD) for the use of this statewide contract. The department's current purchasing authority number must be entered in the appropriate location on each purchase document. Departments that have not been granted purchasing authority by DGS/PD for the use of the State's statewide contracts may access the Purchasing Authority Application at http://www.dgs.ca.gov/pd/Programs/Delegated.aspx or may contact DGS/PD's Purchasing Authority Management Section by e-mail at pams@dgs.ca.gov.
- Departments must have a Department of General Services (DGS) agency billing code prior to placing orders against this contract. Ordering departments may contact their Purchasing Authority contact or their department's fiscal office to obtain this information.

B. Local Governmental Agencies

- Local governmental agency use of this contract is optional.
- Local government agencies are defined as "any city, county, city and county, district or other governmental body or corporation, including the California State Universities (CSU) and University of California (UC) systems, K-12 schools and community colleges", empowered to expend public funds for the acquisition of products, per Public Contract Code Chapter 2, Paragraph 10298 (a) (b). While the State makes this contract available to local governmental agencies, each local governmental agency should determine whether this contract is consistent with its procurement policies and regulations.
- Local governmental agencies shall have the same rights and privileges as the State under the terms
 of this contract. Any agencies desiring to participate shall be required to adhere to the same
 responsibilities as do State agencies and have no authority to amend, modify or change any condition
 of the contract.
- C. Unless otherwise specified within this document, the term "ordering agencies" will refer to all State departments and/or local governmental agencies eligible to utilize this contract. Ordering and/or usage instructions exclusive to State departments or local governmental agencies shall be identified within each article.

Contract User Instructions

3. DGS ADMINISTRATIVE FEES

A. State Departments

The DGS will bill each State department an administrative fee for use of this statewide contract. The administrative fee should NOT be included in the order total, nor remitted before an invoice is received from DGS.

Current fees are available online in the Price Book & Directory of Services located at: http://www.dgs.ca.gov/ofs/home.aspx (Go to Price Book and click on "Purchasing" under Procurement Division.)

B. Local Governmental Agencies

For all local government agency transactions issued against the contract, the Contractor is required to remit the DGS/PD an Incentive Fee of an amount equal to 1% of the total purchase order amount excluding taxes and freight. This Incentive Fee shall not be included in the agency's purchase price, nor invoiced or charged to the purchasing entity. All prices quoted to local governmental agency customers shall reflect State contract pricing, including any and all applicable discounts, and shall include no other add-on fees.

4. EXEMPT PURCHASES

There is no Exempt Purchases associated with this contract.

5. PROBLEM RESOLUTION/SUPPLIER PERFORMANCE

Ordering agencies and/or contractors shall inform the State CA of any technical or contractual difficulties encountered during contract performance in a timely manner. This includes and is not limited to informal disputes, supplier performance, outstanding deliveries, etc.

For contractor performance issues, ordering agencies must submit a completed <u>Supplier Performance Report</u> via email or facsimile to the State CA identified in Article 23, Contract Administration. The ordering agency should include all relevant information and/or documentation (i.e. Purchase documents).

6. CONTRACT ITEMS

The following vehicles are available for purchase.

	GROUP 1 - SEDAN	
1-18-23-14A - Dodge Charger Poli	ce Pursuit Sedan	
1-18-23-14B - Ford Police Pursuit	Sedan	
	GROUP 2 - UTILITY	
1-18-23-14B - Ford Police Pursuit	Utility	

7. SPECIFICATIONS

All products listed on Attachment A, Contract Pricing, must conform to the State of California Bid Specification Number 2310-4264-Sedan, dated 4/12/2018, Attachment 2a and State of California Bid Specification Number 2310-4444-Utility, dated 4/12/2018, Attachment 2b.

8. CUSTOMER SERVICE

Contractor will provide office and personnel resources for responding to requests, including telephone coverage weekdays during the hours of 8:00 AM through 5:00 PM (PT).

Contract User Instructions

9. PRODUCT SUBSTITUTIONS

Product substitution shall be in accordance with the General Provisions, section 16 entitled "Substitutions".

10. PROMOTIONAL PRICING

The Contractor shall immediately notify the State CA of all manufacturers' price declines and the State shall receive full benefit of such declines, effective on the date of manufacturer's public announcement.

11. PURCHASE EXECUTION

A. State Departments

1) Std. 65 Purchase Documents

State departments not transacting in FI\$CAL must use the Purchasing Authority Purchase Order (Std. 65) for purchase execution. An electronic version of the Std. 65 is available at the Office of State Publishing web site: http://www.dgs.ca.gov/pd/Forms.aspx (select Standard Forms).

All Purchasing Authority Purchase Orders (Std. 65) must contain the following:

- Agency Order Number (Purchase Order Number)
- Ordering Agency Name
- Agency Billing Code
- Purchasing Authority Number
- Leveraged Procurement Number (Contract Number)
- Supplier Information (Contact Name, Address, Phone Number, Fax Number, E-mail)
- Line Item number
- Quantity
- Unit of Measure
- Commodity Code Number
- Product Description
- Unit Price
- Extension Price

2) FI\$CAL Purchase Documents

State departments transacting in FI\$CAL will follow the FI\$CAL procurement and contracting procedures.

3) Blanket Orders

The use of blanket orders against this statewide contract is not allowed.

A. Local Governmental Agencies

Local governmental agencies may use their own purchase document for purchase execution. The purchase documents must include the same data elements as listed above (Exception: Purchasing Authority Number is used by State departments only).

12. MINIMUM ORDER

The minimum order shall be one (1) vehicle.

Contract User Instructions

13. ORDERING PROCEDURE

A. Ordering Methods:

Ordering agencies are to submit appropriate purchase documents directly to the contractors via one of the following ordering methods:

- U.S. Mail
- Facsimile
- Email

The contractor's Order Placement Information is as follows:

ORDER PLACEMENT INFORMATION				
U.S. Mail	Fax/Email	Contact Information		
Elk Grove Auto Group 8575 Laguna Grove Drive Elk Grove, CA 95757	(530) 884-4141 dwanefleet@hotmail.com	Dwane Galatti (916) 429-4702		
Folsom Lake Ford 12755 Folsom Blvd Folsom, Ca 95630	(916) 353-2078 danr@folsomlakeford.com markp@folsomlakeford.com	Dan Raimondi (916) 353-2000 Ext. 376 Mark Paoli (916) 353-2000 Ext. 307		

14. ORDER ACCEPTANCE

The Contractor shall accept orders from any State department or local governmental agency. The Contractor shall <u>not</u> accept purchase documents for this contract that:

- Are incomplete;
- Are submitted without CA approval of non-core items
- · Contain non-contract items; or
- Contain non-contract terms and conditions.

The Contractor must not refuse to accept orders from any State department or local governmental agency for any other reason without written authorization from the CA.

15. ORDER RECEIPT CONFIRMATION

The Contractor will provide ordering agencies with an order receipt confirmation, via e-mail or facsimile, within 48 hours of receipt of purchase document. The Order Receipt Confirmation shall include the following information:

- Ordering Agency Name
- Agency Order Number (Purchase Order Number)
- Purchase Order Total Cost
- Anticipated Delivery Date

16. OUT OF STOCK REMEDY

Upon receipt of order acknowledgment identifying out of stock items, the ordering agencies shall have the following options:

· Request back order; or

Contract User Instructions

Cancel the item from the order with no penalty.

Contractor will provide notification to the ordering agencies regarding out-of-stock items which have been back ordered.

Under no circumstance is the Contractor permitted to make substitutions with non-contract items or unauthorized products.

17. DISCONTINUED ITEM REMEDY.

Upon receipt of order acknowledgment identifying discontinued items, the ordering agencies shall have the following options:

- Amend purchase document to reflect State-approved substitute item, per Article 9, Product Substitutions/Discontinued Items)
- Cancel the item from the order.

Under no circumstance is the Contractor permitted to make substitutions with non-contract items or unauthorized products without approval from the CA.

Note: If an OEM ends production on the model year vehicle bid and a replacement is not available, the contract shall be terminated effective the date of the notification to the CA.

18. DELIVERY SCHEDULES

Delivery for orders placed against this contract shall be in accordance with the following:

A. Pre-Delivery Checklist

Prior to delivery, each vehicle shall be completely inspected, serviced and detailed by the delivering dealer and/or the manufacturer's pre-delivery service center. A copy of the pre-delivery checklist shall be completed for each vehicle, signed by a representative of the organization performing the inspection/service, and delivered with the vehicle

B. Locations

Deliveries are to be made (statewide) to the location specified on the individual purchase order, which may include, but not limited to inside garages and parking lots.

C. Schedule

Delivery made to any State department is to begin within 90 days after receipt of order (ARO). State departments may limit delivery to a maximum of ten (10) units per working day.

Delivery to local agencies is to be completed in full within 150 days ARO.

Since receiving hours for each ordering agency will vary by facility, it will be the Contractor's responsibility to check with each facility for their specific delivery hours before delivery occurs. The Contractor must notify the ordering agency within 12 hours of scheduled delivery time, if delivery cannot be made within the time frame specified on the Order Confirmation.

Contractor is requested to make deliveries in Los Angeles County, Orange County, San Bernardino Metropolitan Area, and San Diego Metropolitan Area during off-peak hours. Off-peak hours are Monday through Friday, 10:00 AM to 4:00 PM.

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Contract User Instructions

D. Security Requirements

Deliveries may be made to locations inside secure institutional grounds (such as the California State Prisons) that require prior clearances to be made for delivery drivers. Since security clearance procedures for each facility may vary, it will be the Contractor's responsibility for contacting the secure location for security clearance procedures, hours of operation for deliveries and service, dress code, and other rules of delivery.

<u>Note:</u> In accordance with paragraph 15 of the General Provisions entitled "Delivery", the contractor shall strictly adhere to the delivery terms and completion schedule as specified in this solicitation. Failure to comply with the delivery requirements, as stated, may be considered a breach of contract and subject the contractor to General Provisions 26, entitled "Rights and Remedies of the State for Default".

19. FREE ON BOARD (F.O.B.) DESTINATION

All prices are F.O.B. destination; freight prepaid by the contractor, to the ordering organization's receiving point. Responsibility and liability for loss or damage for all orders will remain with the contractor until final inspection and acceptance, when all responsibility will pass to the ordering organization, except the responsibility for latent defects, fraud, and the warranty obligations.

Delivery shall be FOB Destination to the California Highway Patrol (CHP), Fleet Operations, 3300 Reed Ave., West Sacramento, California 95605.

Vehicles shall be delivered from the factory to the dealer's place of business. If the purchase order indicates delivery outside an FOB point, the dealer and agency will negotiate for delivery beyond the FOB point. This delivery may be subject to an additional delivery charge by the resulting contractors. This charge shall be shown as a separate item on the purchase order and invoice.

State agencies requesting delivery outside the FOB area must contact the Office of Transportation Management for freight rate comparisons if the dealer is delivering the vehicle. These delivery instructions will be provided on the purchase order. Dealers receiving a purchase order without specific transportation instructions must contact the ordering agency.

Caravan or drive-away method of delivery from the factory to a dealer is not acceptable.

The supplier shall insure that each vehicle reaches its delivery point with no less than five (5) gallons of fuel in the fuel tank.

Drop ship deliveries shall not be made without prior State inspection.

Vehicles delivered from a dealer with more than 50 miles on the odometer will be charged 50 cents for each mile exceeding 50 miles. This charge shall be deducted from the order price for each vehicle delivered against each order. Vehicles delivered with more than 250 miles on the odometer will not be accepted.

20. SHIPPED ORDERS

All shipments must comply with General Provisions (rev 06/08/2010); Paragraph 12 entitled "Packing and Shipment". The General Provisions are available at: http://www.documents.dgs.ca.gov/pd/modellang/GPnonIT060810.pdf.

21. HAZARDOUS MATERIALS DOCUMENTATION

For products that contain hazardous chemicals, as defined by California Code of Regulations, Title 8, Section 339, the Contractor must provide a Material Safety Data Sheet (MSDS), via facsimile or email, to the ordering agency upon written request.

Contract User Instructions

22. INSPECTION AND ACCEPTANCE

Vehicles ordered for State use will be inspected by a State Inspector at the dealer's place of business. Inspection will commence within five (5) State working days of notification that a vehicle is ready for inspection. Inspection will include: specification compliance, workmanship, appearance, proper operation of all equipment and systems, and that all documents are present. In the event deficiencies are detected, the vehicle will be rejected and the delivering dealer will be required to make the necessary repairs, adjustments or replacements. Payment and/or the commencement of a discount period (if applicable) will not begin until the defects are corrected and the vehicle is re-inspected and accepted.

Completion of inspection or acceptance by the State Inspector shall in no way release the dealer from satisfying the requirements of the contract, specifications, and warranty. Deviations from the specified requirements that are detected by the inspection shall be corrected by the dealer in an expeditious manner at no expense to the owning agency.

Inspection by local agencies will be at the dealer's place of business or as otherwise agreed to by the dealer and local purchasing agency.

The following documents shall be delivered to the receiving agency with the vehicle:

- Completed and signed pre-delivery service checklist, including the order number and Vehicle Identification Number (VIN)
- · "Line Set Tickets" or "Window Sticker" showing all options installed
- One (1) copy of the vehicle warranty
- · One (1) Owner's Manual
- Speed Calibration documentation for each vehicle

23. CONTRACT ADMINISTRATION

Both the State and the contractor have assigned contract administrators as the single points of contact for problem resolution and related contract issues.

Administrator Information	DGS/PD (State CA)	Elk Grove Auto Group 1-18-23-14A	Folsom Lake Ford 1-18-23-14B
Contact Name:	Rudolph Jimenez	Dwane Galatti	Dan Raimondi or Mark Paoli
Telephone:	(916) 375-4540	(916) 429-4702	(916) 353-2000 Ext. 376 or (916) 353-2000 Ext. 307
Facsimile:	(916) 375-4613	(530) 884-4141	(916) 353-2078
Email:	Rudolph.Jimenez@dgs.ca.gov	dwanefleet@hotmail.com	danr@folsomlakeford.com markp@folsomlakeford.com
Address:	DGS/Procurement Division 707 Third Street, 2 nd Floor West Sacramento, CA 95605	Elk Grove Auto Group 8575 Laguna Grove Drive Elk Grove, CA 95757	Folsom Lake Ford 12755 Folsom Blvd Folsom, Ca 95630

24. INVOICING

Ordering agencies may require separate invoicing, as specified by each ordering organization. Invoices will contain the following information:

- Contractor's name, address and telephone number
- Leveraged Procurement Number (Contract Number)
- Agency Order Number (Purchase Order Number)
- Item and commodity code number

Contract User Instructions

- Quantity purchased
- · Contract price and extension
- State sales and/or use tax
- · Prompt payment discounts/cash discounts, if applicable
- · Totals for each order

25. PAYMENT

A. Terms

Payment terms for this contract are net forty-five (45) days. Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927, et seq. Unless expressly exempted by statute, the Act requires State departments to pay properly submitted, undisputed invoices not more than forty- five (45) days after the date of acceptance of goods, performance of services, or receipt of an undisputed invoice, whichever is later.

B. CAL-Card Use

Use of the CAL-Card for payment of invoices is not allowed under this statewide contract.

C. State Financial Marketplace

The State reserves the right to select the form of payment for all procurements, be it either an outright purchase with payment rendered directly by the State, or a financing/lease-purchase or operating lease via the State Financial Marketplace (GS \$Mart and/or Lease \$Mart). If payment is via the financial marketplace, the Supplier will invoice the State and the State will approve the invoice and the selected Lender/Lessor for all product listed on the State's procurement document will pay the supplier on behalf of the State.

D. Payee Data Record

Each State accounting office must have a copy of the Payee Data Record (Std. 204) in order to process payments. State departments should forward a copy of the Std. 204 to their accounting office(s). Without the Std. 204, payment may be unnecessarily delayed. State departments should contact the contractor for copies of the Payee Data Record.

26. CALIFORNIA SELLER'S PERMIT

The California seller permit number for the contractor is listed below. State departments can verify that permits are currently valid at the following website: www.boe.ca.gov. State departments must adhere to the file documentation required identified in the State Contracting Manual Volume 2 and Volume 3, as applicable.

Contractor Name	Seller Permit #	Contractor Name	Seller Permit #
Elk Grove Auto Group	100-197237	Folsom Lake Ford	026-797640

27. WARRANTY

The manufacturer's regular new vehicle warranty shall apply to all vehicles procured against the resulting contract.

The warranty shall be factory authorized and shall cover not less than 3 years/36,000-mile bumper to bumper, no charge parts and labor. All emission-related components shall be warranted in compliance with the California Air Recourses Board (CARB) and Federal requirements. Bids offering independent insurance or a statement indicating self-insurance will be deemed non-responsive and will be rejected.

Contract User Instructions

This warranty shall be honored by all franchised dealers of the vehicle within the State of California. The State's established preventative maintenance procedures and practices shall be acceptable to the manufacturer/dealers in lieu of the manufacturer's prescribed procedures, which may form a part of the warranty. All warranty certificates and/or cards shall be supplied with each vehicle delivered.

If an additional extended warranty is purchased, a warranty certificate, warranty card, or a statement indicating the extended warranty has been recorded with the manufacturer shall be furnished with each vehicle delivered.

Normal wear items such as tires, belts, hoses, headlamps, light bulbs, brake linings, brake discs/drums, etc. are excluded from warranty coverage. All other items not subject to normal wear or gross operator neglect and abuse, such as window, seat or wiper motors, chassis electrical switches (door, trunk lid), paint, hinges, locks, etc., shall be covered.

The State reserves the right to use re-refined lubrication oils, where available, in lieu of the virgin equivalent oils. The re-refined oils used by the State will meet all API and SAE standards and specifications as set forth by the vehicle manufacturer. The use of said oils shall in no way void or degrade the original manufacturer's minimum 3-year/36,000- mile warranty.

The State reserves the right to use recycled content antifreeze/coolant, where available, in lieu of virgin equivalent antifreeze/coolant, in servicing its vehicles. The recycled antifreeze/coolant used by the State will meet all ASTM standards and specifications as set forth by the vehicle manufacturer. The use of said recycled antifreeze/coolant shall in no way void or degrade the original manufacturer's minimum 3-year/ 36,000-mile warranty.

"Manufacturer's Warranty Policy and Procedures Manual" shall be made available upon customer request. The solicitation shall also require each awarded dealer to designate by name, a responsible contact and alternate assigned for the duration of the contract, who will resolve State warranty-related claims on a priority basis.

Note: Vehicles not placed in service immediately upon receipt shall be warranted from the date the unit is placed in service. The receiving agency shall notify the dealer in writing of the actual "in-service" date.

28. RECYCLED CONTENT

There is no recycled content associated with this contract.

29. SMALL BUSINESS/DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION

There is no small business (SB) or disabled veteran business enterprise (DVBE) participation for this contract.

30. BIDDER DECLARATION/COMMERCIALLY USEFUL FUNCTION (CUF)

The DGS/PD, as the awarding department, has assessed the prime Contractor and subcontractor certifications and CUF during the solicitation evaluation process. Consequently, when executing purchase documents pursuant to this contract, it is not necessary for State departments operating under statewide contract purchasing authority to request the completion of a Bidder Declaration document or perform additional CUF analysis. The department should make a notation of this within their procurement file.

31. ATTACHMENTS

Attachment 1 - Pricing Worksheets for Group 1 - Enforcement Sedan & Group 2 - Enforcement Utility

Attachment 2a – Specification 2310-4264-Sedan, dated 4/12/2018

Attachment 2b - Specification 2310-4444-Utility, dated 4/12/2018



Motorola High Tiered Public Safety Radios for First Responders

Limited Distribution

Motorola Solutions controls who and how their Public Safety radios can be sold. They do this to limit the access of these radios getting in the hands of people who don't have an authorized need. These radios are capable of many advanced features including digital encryption and are mostly used by Police, Fire, Military and other Government Law Enforcement Agencies.

These high Tiered P25 Handheid and Vehicle Radios are the APX Series and the former XTS and XTL Series. The only way to purchase these radios is Directly from Motorola and/or your Motorola assigned Motorola Manufacture's Representative (MR). Day Wireless Systems is the Motorola assigned MR for the City of National City. This means your MR is representing Motorola and quoting you directly as Motorola using their Discounted Pricing Contracts. All Purchase Orders are to be made out to Motorola Solutions, Inc. You are not purchasing anything from Day Wireless Systems (who is also a Motorola Dealer, Reseller and Service Center).

Motorola Two-Way Radio Dealers & Resellers mostly sell lower tiered commercial, professional and business radios to vertical markets such as education, manufacturing, hospitality, etc... The High Tiered Public Safety radios like the APX6000 are not available for Dealers to purchases and Resell. These APX radios are not listed in their Dealer Price Book from Motorola. If a Motorola Radio Dealer & Reseller wanted to sell an APX Public Safety Radio they would have to submit an Above Price Book (APB) Request to Motorola. The Dealer has to list who the end user of the radio is. Motorola will deny this APB request for any Public Safety Account (City or Agency) that already has an assigned MR and Motorola Direct Sales Rep managing that account. For Example any Motorola Radio Dealer who requested to get APB pricing to buy and sell an APX radio to the City of National City would be denied. You are not able to get 3 quotes for these High Tiered Above Price Book Radios.

Above Price Book pricing for a Radio dealer is always 20% off List Price from Motorola. So their cost to buy the APX radio from Motorola is 20% off list price. The Motorola Direct/MiR RCS Contract Price to the City of National City is discounted form 28% to 33% off List Price. Even if Motorola did approve an APB request for a Dealer, they would not be able to compete with the RCS Contract price.

This Controlled Distribution provides the customer with the best pricing and aligns them with a MR that can be their trusted advisor to help them budget and make the best decisions for the long term.

Andy Grimm

Motorola Manufacturer's Representative – Public Safety Markets



COUNTY OF SAN DIEGO – DEPARTMENT OF PURCHASING AND CONTRACTING CONTRACT NO. 559743 AMENDMENT NO. 48

To Meteroia Solutions, Inc. Pursuant to the contract changes clause, you are directed to make the changes described herein to the Contract or do the following described work not included in the previous agreed on Statement of Work.

Title of Contract, Project, or Program: Regional Communications system (RCS) Motorcia Services and Equipment

Effective Date: Date Signed by the County of San Diego Department of Purchasing and Contracting

Description of Contract Change(s) and/or Work To Be Done:

- 1. Modify Section 3, Term of Agreement and Completion of Work. The contract expiration date is change to December 31, 2020.
- 2. Modify Section 6, Notices as follows:

County:

COUNTY OF SAN DIEGO

Suc Willy, Manager

Sheriff's Wireless Services Division 5595 Overland Avenue, Suite 101

Sun Diego, CA 92123 (858) 695 3953

susun willy@sdsheriff.org

Motoroia:

MOTOROLA SOLUTIONS, INC.

Ken Nordholm, Senior Account Manager

10680 Treena Street, Suite 200

San Diego, CA 92131

(858) 488 4440

ken.nordholm@motorolasolutions.com

Due to administrative controls, change the contract number from 550743 to 552544.

All other Ferms and Conditions remain in effect.

IN WITNESS WHEREOF, County and Contractor have executed this Amendment effective as of the date first set forth above.

We, the undersigned Contractor, have given careful consideration to the change proposed and acreby agree, if this proposed change is approved, that we will provide all equipment, furnish all materials, except as may otherwise be noted above, and perform all services necessary for the work specified herein.

Revised contract time for completion is December 31, 2020 .

By: Travis Busticher, MSSSI, Vice President

Date: 41/17/2015

MARK W. ANTHONY Approved MUCC

THIS AMENDMENT IS NOT VALID UNLESS SIGNED BY THE DEPARTMENT OF PURCHASING AND CONTRACTING.

Department Review and Recommended Approval:

Show m Will

Susan M. Willy, Manger Wireless Services Division,

Date: 1//18/15

APPROVED:

By: John M. Kell Garage

Department of Pyrchasing and Contracting

06/08/2015 v3

CONTRACT # 550743 AMENDMENT #48

COUNTY OF SAN DIEGO – DEPARTMENT OF PURCHASING AND CONTRACTING CONTRACT NO. 548289 UNILATERAL AMENDMENT NO. 47

To Motorola Solutions, Inc.: Pursuant to the contract changes clause, you are directed to make the changes described herein to the Contract or do the following described work not included in the previous agreed on Statement of Work.

Title of Contract, Project, or Program: Regional Communications System (RCS) Motorola Services and Equipment Effective Date: Date signed by County of San Diego, Department of Purchasing and Contracting

Description of Contract Change(s) and/or Work To Be Done:

1. Due to administrative internal controls, change the contract number from 548289 to 550743.

All other Terms and Conditions remain in effect.

IN WITNESS WHEREOF, the County has executed this Amendment effective as of the date first set forth above.

APPROVED

JOHN M. PELLEGRINO, Director Department of Purchasing and Contracting

- 3/16/15

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CONTRACT NO. 548289 AMENDMENT NO. 47

Rev. 11/4/2013 v3

COUNTY OF SAN DIEGO – DEPARTMENT OF PURCHASING AND CONTRACTING CONTRACT NO. 544679 UNILATERAL AMENDMENT NO. 46

To: Motoroia Solutions, Inc. Fursuant to the contract changes clause, you are directed to make the changes described herein to the Contract or do the following described work not included in the previous agreed on Statement of Work.

ork To Be Done:	d tyr tarfillion, y flyggar i glytta at François fillial fill de fillial fillia fillia situs e e e e e e e e e E e e e e e e e e e e
the contract number from 544679 to 548289	
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ted this Amendment effective as of the date fi	rst set forth above.
	fect, ted this Amendment effective as of the date fi

COUNTY OF SAN DIEGO – DEPARTMENT OF PURCHASING AND CONTRACTING CONTRACT NO. 541947 UNILATERAL AMENDMENT NO. 43

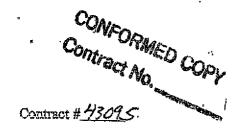
To: Motorola Solutions, Inc. Pursuant to the contract changes clause, you are directed to make the changes described herein to the Contract or do the following described work not included in the previous agreed on Statement of Work.

Description of Contract Change(s) and/or Work To Be Done:	
Due to administrative internal controls, change the contract number from 541	947 to 544679.
All other Terms and Conditions remain in effect.	
APPROVED: APPROVED: By: JOHN M. PELLEGRINO, Director Department of Pyrchasing and Contracting Date:	as of the date first set forth above.

COUNTY OF SAN DIEGO – DEPARTMENT OF PURCHASING AND CONTRACTING CONTRACT NO. 43095 UNILATERAL AMENDMENT NO. 36

To Motorola, Inc.: Pursuant to the contract changes clause, you are directed to make the changes described herein to the Contract or do the following described work not included in the previous agreed on Statement of Work.

Description of Contract Change(s) and/or Work To Be	Daue:	
1. Due to new fiscal year and contractor name change to Mot	torola Solutions, Inc., change the contract number from 43095 to 54	1947.
•	•	
All other Terms and Conditions remain in effect. IN WITNESS WHEREOF, the County has executed this Ame	endment effective as of the date first set forth above.	pEllipation of a
APPROVED:		
By: Bruce's Petrus WINSTON F. McCOLL, Diffector Department of Purchasing and Contracting Date: 03-09-12	,	



AGREEMENT WITH A COMMUNICATIONS MANUFACTURING FIRM TO PROVIDE A REGIONAL COMMUNICATIONS SYSTEM

THIS AGREEMENT made and entered into this day of December, 1995 by and between the County of San Diego, a political subdivision of the State of California, hereinafter called "COUNTY," and Motorola, Inc. (MOTOROLA) located at 9980 Carroll Canyon Road, San Diego, CA 92131.

WITNESSETH:

WHEREAS, the COUNTY, by action of Board of Supervisors Item 9 on December 13, 1994 authorized the Director of Purchasing and Contracting, pursuant to Article XXIII, Section 93.1a of the Administrative Code, to award a contract to provide a Regional Communications System (RCS) and by Item 2 on March 7, 1995 authorized the RCS Board of Directors, on behalf of the COUNTY, to review and approve said contract.

WHEREAS, the COUNTY desires such services to be provided in accordance with MOTOROLA's proposal dated SEPTEMBER 11, 1995 and as amended by MOTOROLA's letter dated December 29, 1995.

WHEREAS MOTOROLA agrees to provide its scrvices and equipment subject to the following additional conditions, and shall be considered the prime contractor for the provision of services required by the COUNTY, and

WHEREAS, MOTOROLA is specially trained and possess certain skills, experience, education and competency to perform special services;

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SECTION I. DUTY OF MOTOROLA

- A. MOTOROLA shall designate a representative who will be in charge of this Project.
- B. MOTOROLA shall designate a representative, if other than the representative designated in "A" above, who may sign in the name of MOTOROLA, on letters, papers, and other documents relating to professional services to be performed hereunder.
- C. The designation(s) required by "A" and "B" above shall be sent to Contracting Officer's Technical Representative, (COTR) Mr. Jon Fullinwider, Director, Department of Information Services or his designee.
- D. MOTOROLA shall, in a good workmanlike and professional manner and at their own cost and expense, furnish all of the labor, technical, administrative, professional and other personnel, all supplies and materials, equipment, printing, vehicles, transportation, office space and facilities, and all test, testing and analysis, calculations, and all other means whatsoever, except as herein otherwise expressly specified to be furnished by the COUNTY, necessary or proper to perform and complete the work and provide the services required of MOTOROLA by this Agreement.
- E. MOTOROLA shall function as a prime contractor for performance of the services described in Volume II - Statement of Work.

SECTION 2. WORK TO BE PERFORMED BY MOTOROLA

MOTOROLA shall furnish, install, test and cut over a state-of-the-art 800 MHz public safety trunked radio communications system as described by the functional specifications set forth in MOTOROLA's proposal, including all required support equipment—such as consoles as identified and described in this Agreement and MOTOROLA's proposal. The system shall also include delivery of portable and mobile radios as listed in this Agreement. The COUNTY has the option to review and modify user equipment quantities and models up to 90 days prior to actual or scheduled delivery whichever is later. All equipment provided hereunder shall be new.

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MOTOROLA agrees to do and perform the work described in MOTOROLA's proposal dated September 11, 1995 as amended by MOTOROLA's letter dated December 22, 1995. The specific tasks to be performed by MOTOROLA are listed in Volume II - Statement of Work and Specific Equipment Lists are described in Volume III which volumes are attached hereto and made a part hereof.

SECTION 3. TERM OF AGREEMENT AND COMPLETION OF WORK

All equipment to be delivered and services required by this Agreement shall be satisfactorily completed in accordance with the schedules set forth in Exhibit B. This Agreement shall be in effect until 31 December 2010, and may thereafter be renewed upon written agreement of COUNTY and MOTOROLA.

SECTION 4. WORK TO BE DONE BY COUNTY

The COUNTY shall provide such information as required by the Statement of Work and as are reasonably necessary for MOTOROLA to perform its services.

- 4.1 The COTR or a designated representative, shall represent the COUNTY in all matters pertaining to the services rendered under this Agreement. The COTR will appoint a Project Manager to represent the COTR in the day-to-day operations and development of the Project.
- 4.2 The COUNTY shall select and acquire sites and provide adequate access to the site to allow delivery and installation of all required improvements.
- 4.3 Notwithstanding anything to the contrary in this Agreement, the COUNTY shall only furnish information or services described in this Agreement to the extent that any such information or service is reasonably required for MOTOROLA to perform its obligations under this Agreement and is requested by MOTOROLA in writing.

- 4.4 The COUNTY will supply drawings and specifications of any existing facilities including plans, elevations, sections, details and existing utilities, to the extent that such information is reasonably available.
- 4.5 The COUNTY shall participate in all subsystem acceptance tests and shall accept the subsystems in accordance with their respective Acceptance Test Procedures which are incorporated herein. Upon acceptance of all subsystems, the RCS shall be deemed to be finally accepted.
- 4.6 The COUNTY shall acquire all permits and licenses necessary for the construction and operation of the sites.

SECTION 5. PAYMENT

The COUNTY shall pay MOTOROLA, as full compensation for its services on this Project, a total amount of \$ 39,672,111.92. This amount is payment for all items as set forth in the Statement of Work and as further described in Exhibit B "Milestone Payment Schedule & Terms." The above amount excludes the items listed in Line Item 3 as options. Payment for each milestone shall be made in accordance with Exhibit B. MOTOROLA shall invoice for tasks assigned subsequent to the date of this Agreement either upon milestone completion or on the following basis:

- Monthly percentage complete invoices by task, including a listing of tasks
 performed and associated costs, to include all subcontract costs and other direct
 costs.
- A copy of the monthly report required in Section 8 of this Agreement shall be attached to each monthly invoice, detailing tasks performed and percentage completion of each task.
- The COUNTY is precluded from making payments prior to receipt of services (advance payments). The COUNTY will accept invoices for progress payments and if approved, will reimburse MOTOROLA up to 90% of the value of goods/services

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received. Invoice to be submitted as follows:

a. Original invoices will be submitted monthly, or at the completion of each phase or task, or at contract completion to:

COUNTY AUDITOR AND CONTROLLER, ROOM 306 1600 PACIFIC HIGHWAY. SAN DIEGO, CA 92101

- b. A copy of the invoice shall be submitted to the COTR. The invoice must specify items and deliverables for all items described in the "Statement of Work."
- c. Payment shall be Net 30 Days from receipt and approval of invoice unless otherwise stated. Discounts will be calculated from receipt of merchandise or invoice, whichever is later.
- 4. The balance due for each task may be released upon the completion of that task.
 The final invoice will be submitted by MOTOROLA upon completion of each task.

Included in the price set forth above, the COUNTY and MOTOROLA have agreed that the COUNTY will have the ability to issue Task Orders (Item 2 below) requiring additional work within the scope of the contract services or exercising options as set forth below. Task Orders, up to a value of \$4,500,000 (total) may be issued by the COTR. Each Task Order shall:

- I. Be sequentially numbered for identification purposes.
- 2. Contain a description of the work to be performed.
- 3. Establish a price and a payment schedule for the tasks which are to be accomplished.
- Establish a schedule for completion of the task.
- 5. Shall be signed by both MOTOROLA and COTR as well as the Contracting Officer to indicate acceptance.

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<u>Item1</u>: Provision of Regional Communications Systems and Associated Services: \$39,672,111.92.

Item2: Task orders (To be written subsequent to contract): \$4,500,000.

Item3: As a part of this Agreement, COUNTY and MOTOROLA agree to the following optional pricing arrangements.

- 1. Additional equipment for the backbone, including RNG, RNC, etc. may be added to the deliverable items. Such equipment shall be ordered by the COUNTY through the TASK ORDER provision (line item 2) at the prices set forth in the Master Equipment List (Volume III), provided that the option to purchase at the stated prices must be exercised no later than final system acceptance.
- 2. COUNTY may, through the TASK ORDER provision cited in line item 2, purchase Mobile Data equipment, additional portable equipment, spare parts and such other items as are listed in Volume III of this Agreement.

SECTION 6. NOTICES

Any notice or notices required or permitted to be given pursuant to this Agreement may be delivered to the following addresses:

COUNTY:

COUNTY OF SAN DIEGO

ATTENTION:

Mr. Jon Fullinwider

Department of Information Services

1600 Pacific Highway

San Diego, California 92101

MOTOROLA:

MOTOROLA, Inc.

ATTENTION:

Mr. C. Jackson, Vice President, System Integration

Land Mobile Products Sector

9980 Carroll Canyon Rd.

San Diego, CA 92131-1186

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203 204 All notices required under this Agreement shall be in writing and shall be delivered either by (I) personal delivery, (ii) expedited messenger service or (iii) postage prepaid, return receipt requested certified mail, addressed to the party set forth above. A notice will not be effective until the addressec receives it, or on the date that it is recorded as being refused for receipt by the intended recipient. Either party may change the individual and/or the address for purposes of this Section by written instructions to the other party of such change.

SECTION 7. OTHER APPLICABLE AGREEMENTS/ORDER OF PRECEDENCE

The following documents shall constitute the Agreement between MOTOROLA and the COUNTY, all identified documents are hereby incorporated by reference and made a part hereof as if fully set forth herein.

- 1. This Agreement and all duly executed amendments to this Agreement, with the latest amendment taking precedence over earlier amendments.
- 2. General Terms and Conditions
- 3. Special Terms and Conditions
- 4. The Exhibits and all duly executed amendments to said Exhibits
- 5. MOTOROLA's proposal, dated September 11, 1995 and as amended by MOTOROLA's letter dated December 29, 1995.

In the event of any inconsistency or conflict between portions of this Agreement or the referenced documents; precedence shall be given in the following order:

- 1. The Agreement and all duly executed amendments to this Agreement, with the latest amendment taking precedence over earlier amendments.
- 2. General Terms and Conditions
- Special Terms and Conditions
- 4. The Exhibits and all duly executed amendments to said Exhibits
- 5. MOTOROLA's proposal, dated September 11, 1995 and as amended by MOTOROLA's letter dated December 29, 1995.

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SECTION 8. REPORTS

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225 226 227 MOTOROLA shall provide monthly reports to the COTR. These reports shall include, as a minimum:

- A summary of tasks performed during the reporting period, including tasks initiated, tasks completed and percentage of completion of tasks currently in progress.
- 2. Estimates of work to be undertaken in the next reporting period.
- 3. Problems that have arisen during the reporting period and proposed solutions.
- 4. Any action(s) required by the COUNTY to resolve problems
- Items requiring completion by COUNTY during next period to avoid impact on costs, schedule or performance.
- 6. Summary of Financial Reports, as provided for in Special Terms & Conditions Paragraph entitled "Project/Contract Financial Reporting"

SECTION 9. ENTIRE AGREEMENT

This Agreement (including the agreements and documents incorporated by reference in Section 7) constitutes the entire Agreement, understanding and representation expressed or implied between MOTOROLA and the COUNTY with respect to the equipment and services to be provided under this Agreement and supersedes all other additional communications, both written and oral.

All parties by their authorized signatures, acknowledge that they have read, understood and agree to all the Terms & Conditions of this Agreement.

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GENERAL TERMS & CONDITIONS OF AGREEMENT

1. DEFINITIONS

 "COUNTY" shall mean the County of San Diego, California.

"MOTOROLA" shall mean MOTOROLA, Inc. whose proposal has been accepted by the COUNTY and who has entered into this agreement with the COUNTY to provide the equipment and services described herein.

2. <u>AFFIRMATIVE ACTION</u>

MOTOROLA shall comply with the Affirmative Action Program for Vendors as set forth in Article IIIk (commencing at Section 84) of the San Diego County Administrative code, which program is incorporated herein by reference. A copy of this Affirmative Action Program will be furnished upon request by the County of San Diego Contract Compliance Office, 1600 Pacific Highway, Room 208, San Diego, CA 92101.

The County of San Diego, as a matter of policy, encourages the participation of small, minority, and women owned businesses.

3. ASSIGNMENT OF RIGHTS, TITLE AND INTEREST

MOTOROLA agrees that it will assign to the purchasing body (COUNTY) all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 1 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by MOTOROLA for sale to the COUNTY pursuant to the contract. Such assignment shall be made and become effective at the time the COUNTY tenders final payment to MOTOROLA.

4. CAL OSHA

As applicable, all items furnished under this Agreement shall meet or exceed the standards established by the California Occupational Safety and Health Act of 1973 and current amendments thereto, provided the end use of the item is for the purpose for which the item is intended.

5. **DELIVERY**

All delivery shall be FOB at the County, unless staging or other pre-installation is mutually agreed upon. Time is of the essence. The acceptance by the COUNTY of late performance with

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 or without objection or reservation shall not waive the right to claim damage for such breach nor constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by the MOTOROLA.

6. REVIEW/APPROVAL/INSPECTION

All items and deliverables are subject to final inspection, review/approval and acceptance by the COUNTY at the COUNTY's offices. Such final inspection, review/approval and acceptance or rejection shall be made within 15 days after delivery or as otherwise mutually agreed upon.

7. TERMINATION FOR DEFAULT

The COUNTY may, by written notice of default to MOTOROLA terminate any of this Agreement in whole or in part should MOTOROLA fail to make satisfactory progress, fail to deliver in conformance to specifications and the requirements set forth therein. COUNTY shall give MOTOROLA written notice of such default ("Cure Notice") and MOTOROLA shall have ten (10) working days to provide a plan of action to cure said default. In the event that either a) the plan is deemed unacceptable by the COUNTY or b) MOTOROLA fails to cure such default, then the contract shall be terminated for default. In the event of such termination, the COUNTY reserves the right to purchase or obtain the supplies or services elsewhere, and MOTOROLA shall be liable for the difference between the prices set forth in the terminated order and the actual cost thereof to the COUNTY. The prevailing market price shall be considered the fair repurchase price. COUNTY agrees that in the event of a partial or complete termination hereunder, the replacement System shall not have a capability exceeding that specified in the Agreement and that said replacement shall be of like kind and quality to accomplish the intended purpose of the agreement.

- 7.1 If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that MOTOROLA was not in default under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause herein.
- 7.2 The rights and remedies of the COUNTY provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under resulting order.

8. TERMINATION FOR CONVENIENCE

The COUNTY may, by written notice stating the extent and effective date, terminate this Agreement for convenience in whole or in part, at any time. The COUNTY shall pay MOTOROLA as full compensation for performance until such termination:

8.1 The unit or pro rata price for the delivered and accepted portion.

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- 8.2. A reasonable amount, as costs of termination, not otherwise recoverable from other sources by MOTOROLA as approved by the COUNTY, with respect to the undelivered or unaccepted portion of this Agreement, provided compensation hereunder shall in no event exceed the total price.
- 8.3 In no event shall the COUNTY be liable for any loss of profits on this Agreement or portion thereof so terminated.
- 8.4 The rights and remedies of the COUNTY provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under resulting order.

9. TITLE

Title to the material and supplies purchased shall pass directly from MOTOROLA to the COUNTY upon delivery, subject to the right of COUNTY to reject upon inspection.

MOTOROLA shall retain risk of loss for all equipment until acceptance at the COUNTY's designated facility or site; title for all equipment delivered hereunder shall pass to the County at the point and time of receipt as evidenced by a receiving document signed by the COTR or an authorized designee. The above notwithstanding, title to software included in the equipment shall not pass to the COUNTY at any time. Software is the subject of a separate provision of this Agreement and is subject to the license agreement set forth herein.

10. VARIATIONS IN SPECIFICATIONS

The COUNTY reserves the right to waive a variation in specification if, in the opinion of the COUNTY, such variation does not materially change the item or its performance within parameters acceptable to the COUNTY.

11. HAZARDOUS SUBSTANCES

- Director's list as hazardous; MOTOROLA shall forward a material safety data sheet (MSDA) (OSHA Form 20), referencing the purchase order number, to San Diego County, Department of Health Services, Attn. Chief, Occupational & Radiological Health, PO Box 85261, San Diego, CA 92138-5261. All shipments are to have proper labeling requirements.
- 11.2 IN ACCORDANCE WITH COUNTY BOARD OF SUPERVISORS POLICY B-64, MOTOROLA SHALL NOT PROVIDE OR DELIVER ANY PRODUCTS MANUFACTURED USING FULLY HALOGENATED CHLOROFLUOROCARBONS (CFC), UNLESS SPECIFICALLY AUTHORIZED BY THE COUNTY DIRECTOR, PURCHASING AND CONTRACTING.

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12. PROHIBITED CONTRACTS

Section 67 of the San Diego County Administrative Code provides that the COUNTY shall not contract with, and shall reject any bid or proposal submitted by the person or entities specified below, unless the Board of Supervisors finds that special circumstances exist which justify the approval of such contract:

- 12.1 Persons employed by the COUNTY or of public agencies for which the Board of Supervisors is the governing body;
- 12.2 Profit-making firms or businesses in which employees described in sub-section (a) of code serve as officers, principals, partners, or major shareholders;
- 12.3 Persons who, within the immediately preceding twelve (12) months came within the provisions of the above sub-section and who (1) were employed in positions of substantial responsibility in the area of service to be performed by the contract, or (2) participated in any way in developing the contract or its service specifications; and
- 12.4 Profit-making firms or businesses in which the former employees described in sub-section 12.3 above serve as officers, principals, partners, or major shareholders.

With the affixing of a signature to this Contract, MOTOROLA certifies that the above provisions of the Code have been complied with, and that any exception will cause any ensuing contract to be invalid.

13. PUBLIC AGENCY

It is intended that any other public agency (i.e., city, district, public authority, public agency, municipality and other political sub-division or public corporation of California) located in San Diego and Imperial Counties shall have the option to participate in any award made as a result of this solicitation at the same prices and FOB destination, Terms & Conditions. The County shall incur no financial responsibility in connection with purchase orders issued by another public agency. The public agency shall accept sole responsibility for placing order or payments to MOTOROLA. State whether said option is granted.

YES [X] NO[]

14. AVAILABILITY OF FUNDING

This contract is project funded. Fiscal funds are not included in this Agreement

The COUNTY's obligation for payment of any contract beyond the current fiscal year end is contingent upon the availability of funding from which payment can be made. No legal liability

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on the part of the COUNTY shall arise for payment beyond June 30 of the calendar year unless funds are made available for such performance.

FLAMMABILITY & TOXICITY

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Materials furnished under this Agreement must meet or exceed minimum California State Fire Marshal's standard for flammability and toxicity for institutional fabrics. MOTOROLA shall provide evidence of California Marshal's test results and approval number.

16. CONTRACT ADMINISTRATION

The Director of Furchasing and Contracting is the designated Contracting Officer and is the only COUNTY official authorized to make any changes to this agreement.

The COUNTY has designated the following individual as the Contracting Officer's Technical Representative (COTR):

Department Information Services-Mr. Jon Fullinwider or his designce.

The COTR will chair MOTOROLA progress meetings and will coordinate the COUNTY's contract administrative functions. The COTR is designated to receive and approve MOTOROLA invoices for payment, audit and inspect records, inspect MOTOROLA's services, and provide other technical guidance as required. The COTR is not authorized to change any Terms & Conditions of the Contract. Changes to the scope of work will be made only by the Board of Supervisors and/or the Contracting Officer issuing a properly executed Change Order modification.

17. CONTRACT PROGRESS MEETINGS (with amplification in Section 8. Reports of the Agreement)

The COTR and other County Personnel, as appropriate, will meet pariodically with MOTOROLA to review the contract performance. At these meetings the COTR will apprise MOTOROLA of how the COUNTY views MOTOROLA's performance and MOTOROLA will apprise the COUNTY of problems, if any, being experienced. MOTOROLA will also notify the Contracting Officer (in writing) of any work being performed, if any, that MOTOROLA considers to be over and above the requirements of the contract. Appropriate action shall be taken to resolve outstanding issues.

A summary of these meetings which shall include, but not be limited to, key issues, action items, items agreed to and problems requiring resolution will be reduced to writing by MOTOROLA and signed by the COTR and MOTOROLA. Should the COUNTY not concur with meeting summary, the COUNTY will set out in writing any areas of disagreement. Appropriate action will be taken to resolve any areas of disagreement.

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18. INSPECTION OF SERVICE

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MOTOROLA's services shall be performed with a high degree of care and diligence, and where required, in accordance with the highest standards exercised by engineers performing similar services in the San Diego, California area, and as expeditiously as is consistent with such standards of skill and care and the orderly progress of the Work.

- 18.1 All performance (which includes services, materials, supplies and equipment furnished or utilized in the performance of this contract, and workmanship in the performance of service) shall be subject to inspection and test by the COUNTY during the term of the Agreement. MOTOROLA shall provide adequate cooperation to any inspector assigned by the COUNTY to permit the inspector to determine MOTOROLA's conformity with these specifications and the adequacy of the services being contractually provided. All inspection by the COUNTY shall be made in such a manner as not to unduly interfere with MOTOROLA's performance.
- 18.2 If any services performed hereunder are not in conformity with the specifications and requirements of this contract, the COUNTY shall have the right to require MOTOROLA to perform the services in conformity with said specifications and requirements at no increase in total contract amount. When the services to be performed are of such nature that the difference cannot be corrected, the COUNTY shall have the right to (1) require MOTOROLA immediately to take all necessary steps to ensure future performance of the services in conformity with requirements of the contact, and (2) reduce the contract price to reflect the reduced value of the services performed. In the event MOTOROLA fails to perform the services promptly or to take necessary steps to ensure future performance of the service in conformity with the specifications and requirements of this contract, the COUNTY shall have the right to terminate this contract for default as provided in the Termination for Default clause herein.

19. CHANGES

The Contracting Officer may at any time, by written order, make changes within the general scope of this contract, in the definition of services to be performed, and the time (i.e., hours of the day, days of the week, etc.) and place of performance thereof. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price of delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by MOTOROLA for adjustment under this clause must be asserted within 30 days from the date of receipt by MOTOROLA of the notifications of change; provided however, that the Contracting Officer, if Contracting Officer decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Where the cost of property made obsolete or

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 excess as a result of a change is included in MOTOROLA's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. When the estimated cost of the change is less than \$25,000, nothing in this clause shall excuse MOTOROLA from proceeding with the contract as changed. In the event that the estimated cost of the change order exceeds \$25,000, Motorola shall not be required to proceed with the change until the change order has been signed by both parties to the Agreement.

20. INDEPENDENT CONTRACTOR

MOTOROLA is, for all purposes arising out of this contract, an independent contractor and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that MOTOROLA shall in no event, as a result of this contract, be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits.

21. ASSIGNABILITY

MOTOROLA shall not assign any interest in this contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the COUNTY thereto; provided however, that claims for money due or to become due to MOTOROLA from the COUNTY under this contract may be assigned without such approval. Notice of any such assignment or transfer shall be furnished promptly to the COUNTY.

22. SUBCONTRACT FOR WORK OR SERVICES

No contract shall be made by MOTOROLA with any party for furnishing any of the work or services herein contained without the prior written approval of the COTR excepting those suppliers/subcontractors identified in MOTOROLA's proposal; but this provision shall not require the approval of contracts of employment between MOTOROLA and personnel assigned for services thereunder, or for parties named in proposal and agreed to any resulting contract.

MOTOROLA is further reminded that it is the COUNTY's policy to encourage the participation of minority business enterprises. This includes: ensuring that, if available, minority firms are solicited, where feasible dividing the requirement into smaller units for the purpose of greater minority participation, and establishing delivery and payment schedules which will facilitate participation by minority businesses.

23. HOLD HARMLESS

MOTOROLA agrees to fully indemnify, defend and save harmless the COUNTY, its officers and employees against any and all loss, damage, liability, claim, demand, suit of whatsoever nature for damage to property or for personal injury, including death, made by anyone whomsoever, which may arise from operations carried out under this contract to the extent such claims are

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caused by MOTOROLA's sole negligence, or misconduct. MOTOROLA shall not be responsible for and the COUNTY shall defend, indemnify and hold MOTOROLA, its officers and employees harmless from any and all claims of whatsoever kind or nature for the damage to property or for personal injury, including death, made by anyone whomsoever, which may arise from operations carried cut under this contract to the extent such claims are caused by the COUNTY's sole negligence or misconduct. With respect to any and all claims of whatsoever kind or nature for damage to property or for personal injury, including death, made by anyone whomsoever, which may arise from the joint or concurrent negligence of MOTOROLA and COUNTY, each party shall assume responsibility in proportion to the degree of its respective fault. IN NO EVENT SHALL MOTOROLA OR COUNTY BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE.

24. INTEREST OF CONTRACTOR

MOTOROLA covenants that it presently has no interest, including but not limited, to other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. MOTOROLA further covenants that in the performance of this contract, no person having any such interest shall be employed or retained by it under this contract.

25. CONDUCT OF CONTRACTOR

- 25.1 MOTOROLA agrees to inform the COUNTY of all MOTOROLA's interests, if any, which are or which MOTOROLA believes to be incompatible with any interests of the COUNTY.
- 25.2 MOTOROLA shall not, under circumstances which might reasonably be interpreted as an attempt to influence the recipient in the conduct of their duties, accept any gratuity or special favor from individuals or organizations with whom MOTOROLA is doing business or proposing to do business, in accomplishing the work under the contract.
- 25.3 MOTOROLA shall not use for personal gain or make other improper use of privileged information which is acquired in connection with its employment. In this connection, the term "privileged information" includes, but is not limited to, unpublished information relating to technological and scientific development; medical, personnel, or security records of individuals; anticipated materials requirements or pricing actions; and knowledge of selections of MOTOROLA or subcontractor in advance of official announcement.

25.4 MOTOROLA or employees thereof shall not offer gifts, gratuity, favors, entertainment directly or indirectly to COUNTY employees.

26. GOVERNING LAW

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This contract shall be construed and interpreted according to the laws of the State of California.

27. AUDIT AND INSPECTION OF RECORDS

- 27.1 General. The COUNTY shall have the audit and inspection rights described in this section.
- 27.2 Pricing Data. If MOTOROLA submitted pricing data in connection with the pricing of this contract or any change or modification thereto, unless such pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the Contracting Officer or Contracting Officer's representatives who are employees of the COUNTY or its agent shall have the right to examine the books, records, documents and other data of MOTOROLA related to the negotiation pricing or performance of such contract, change or modification, for the purpose of evaluating the accuracy, completeness and currency of the pricing data submitted.
- 27.3 Availability. The materials described above shall be made available at the office of MOTOROLA, at all reasonable times, for inspection, audit or reproductions, until the expiration of three years from the date of final payment under this contract, or by (I) and (2) below:
 - 27.3.1 If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for a period of three years from the date of any resulting final settlement.
 - 27.3.2 Records which relate to appeals, litigation or the settlement of claims arising out of the performance of this contract, shall be made available until such appeals, litigation, or claims have been disposed of, or three years after contract completion, whichever is longer.
- 27.4 MOTOROLA shall insert a clause containing all the provisions of this entire clause in all subcontracts hereunder except altered as necessary for proper identification of the contracting parties and the Contracting Officer under the COUNTY's Prime Contract.

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28. PATENT AND COPYRIGHT INFRINGEMENT

MOTOROLA shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which MOTOROLA has knowledge.

29. FUNCTIONAL REQUIREMENTS

Unless MOTOROLA expressly states otherwise herein, where functional requirements are expressly stated as part of the requirements of this Agreement, Volume II, Para. 1.0, MOTOROLA, warrants that in its opinion the system is capable of meeting those requirements. In the event of any inconsistency between the functional specifications and the detailed specifications contained in this Agreement, the former will control.

30. INSURANCE

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 Before commencement of the work, MOTOROLA shall submit Certificates of Insurance evidencing that MOTOROLA has obtained for the period of the contract, from generally recognized responsible insurer, insurance in the following forms of coverage and minimum amounts specified:

- 30.1 A policy of Worker's Compensation in statutory amounts.
- 30.2 Commercial General Liability insurance written on an "occurrence" basis and in an amount of not less than \$1,000,000 each occurrence.
- 30.3 Automobile Liability Insurance covering owned, non-owned and hired automobiles in an amount not less than \$1,000,000 combined single limit.
- 30.4 The policies (except for Workers' Compensation) shall name the County of San Diego as additional insured.
- 30.5 Each policy of insurance shall contain the following clause:

"It is agreed that these policies shall not be canceled nor the coverage reduced until thirty. (30) days after the COTR shall have received written notice of such cancellation or reduction. The notice shall be deemed effective the date delivered to said COTR, as evidenced by properly validated return receipt..." Each policy of insurance shall name the County of San Diego as the additional insured party.

30.6 The County of San Diego shall retain the right at any time to review the coverage, form and amount of insurance required herein and may require MOTOROLA to obtain insurance sufficient in coverage, form and amount to provide adequate protection against the kind

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and extent of risk which exist at the time a change in insurance is required. The COUNTY requirement shall be reasonable.

31. LICENSING

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Attention is directed to the provisions of Chapter 9 of Division 3 of the Business and Professions Code concerning the licensing of MOTOROLA. MOTOROLA and its subcontractors shall be licensed, if required, in accordance with the laws of this state and any contractor or subcontractor not so licensed is subject to the penalties imposed by such laws.

32. PERMITS, NOTICES, FEES AND LAWS

MOTOROLA shall, at MOTOROLA's expense, obtain all necessary business pennits and licenses, give all necessary notices, pay all fees required by law, and comply with all laws, ordinances, rules and regulations relating to work and to the preservation of the public health and safety.

33. AIR, WATER POLLUTION CONTROL, SAFETY AND HEALTH

MOTOROLA shall comply with all air pollution control, water pollution, Safety and Health Ordinances and statutes which apply to the work performed pursuant to this contract, including any requirements specified in state government codes.

34. PERSONNEL ASSIGNMENT AND REPLACEMENT

- 34.1 Resumes of key individuals who will be assigned to the project will be furnished. All such personnel will be assigned to the project.
- 34.2 A project manager will be assigned, (if more than one individual is assigned) as the individual responsible for the overall performance of any resulting contract and will be directly responsible for responding to the COTR at all times during the term of this contract.
- 34.3 No replacement of personnel will be allowed without firll resume submittal, justification therefor and approval by the COTR.

35. RIGHT TO ACQUIRE EQUIPMENT AND SERVICES

Nothing in this agreement shall prohibit the COUNTY from acquiring the same type or equivalent equipment and/or service from other sources, when deemed by the COUNTY to be in its best interest.

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SEVERABILITY

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37. <u>FINDINGS CONFIDENTIAL</u>

Any reports, information, data, etc., given to or prepared or assembled by MOTOROLA under this Agreement which the COUNTY requests to be kept as confidential shall not be made available to any individual or organization by MOTOROLA without the prior written approval of the COUNTY.

38. PUBLICATION, REPRODUCTION AND USE OF MATERIAL

No material produced, in whole or in part, under this Agreement shall be subject to copyright in the United States or in any other country. The COUNTY shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement. All reports, data and other materials prepared under this Agreement shall be property of the COUNTY upon completion of this Agreement.

39. LIMITATION OF FUTURE CONTRACTS

- 39.1 It is agreed by the parties to the contract that MOTOROLA will be restricted in their future contracting with the COUNTY to the manner described below. Except as specifically provided in this clause, MOTOROLA shall be free to compete for business on an equal basis with other companies.
- 39.2 If MOTOROLA under the terms of the contract, or through the performance of tasks pursuant to this contract, is required to develop specifications or statements of work and such specifications or statements of work are to be incorporated into a solicitation, MOTOROLA shall be ineligible to perform the work described within that solicitation as a prime or subcontractor under an ensuing COUNTY contract. It is further agreed, however, that the COUNTY will not, as additional work or by change, unilaterally require MOTOROLA to prepare such specifications or statements of work under this contract.
- 39.3 To the extent that the work under this contract requires access to proprietary, business confidential or financial data of other companies, and as long as such data remains proprietary or confidential, MOTOROLA shall protect such data from unauthorized use and disclosure and agree not to use it to compete with such-companies.

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40. DRUG & ALCOHOL FREE WORKPLACE

The County of San Diego, in recognition of individual rights to work in a safe, healthful and productive work place, has adopted a requirement for a drug and alcohol free work place, County of San Diego Drug and Alcohol Use Policy C-25. This policy provides that all COUNTY employed contractors and contractor employees shall assist in meeting this requirement.

- 40.1 As a material condition of this agreement, MOTOROLA agrees that MOTOROLA and MOTOROLA's employees, while performing service on the COUNTY property, or while using COUNTY equipment:
 - 40.1.1 Shall not be in any way impaired because of being under the influence of alcohol or a drug.
 - 40.1.2 Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal drug.
 - 40.1.3 Shall not sell, offer, or provide alcohol or a drug to another person.

The above sub-paragraph shall not be applicable to a MOTOROLA employee who, as part of the performance of normal job duties and responsibilities prescribes or administers medically prescribed drugs.

- 40.2 MOTOROLA shall inform all employees that are performing service for the COUNTY on COUNTY property or using COUNTY equipment, of the COUNTY objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the COUNTY.
- 40.3 The County may Terminate for Default or Breach this Agreement and any other Agreement MOTOROLA has with the COUNTY, if MOTOROLA, or MOTOROLA's employees are determined by the Contracting Officer not to be in compliance with the conditions listed herein.

41. SEXUAL HARASSMENT

To implement COUNTY policy to provide a work environment free of sexual harassment, MOTOROLA shall comply with Board Supervisors' Policy C-22, "Sexual Harassment Policy," and with all applicable State and federal laws pertaining to sexual harassment or discrimination.

SPECIAL TERMS & CONDITIONS OF AGREEMENT

1. PERFORMANCE BONDS

MOTOROLA will provide to the COUNTY a Performance Bond in a sum equal to twenty-five (25%) percent and a Payment Bond in a sum equal to ten (10%) percent of the contract with surety satisfactory to the COUNTY, within ten (10) working days after notice is received from the COUNTY that the contract has been awarded. The cost of providing the bond shall be considered as included in the price and no additional compensation will be allowed therefor. If MOTOROLA fails to provide the bonds within the time specified, the COUNTY may, at its option, determine that MOTOROLA is in default and terminate the contract in accordance with the clauses of the contract entitled "Termination for Default" and "Termination for Convenience."

2. LIQUIDATED DAMAGES

Time is of the essence in the performance of this Agreement, and it is agreed by MOTOROLA and the COUNTY that if this Agreement is not fully and completely performed within the terms of the Agreement, as described in the Project Implementation Plan, and such failure is due to circumstances which are solely within MOTOROLA's control, and the COUNTY has timely performed its obligations under the Agreement, damage will thereby be sustained by the COUNTY. Since it is and will be impractical and extremely difficult to determine the actual damage which the COUNTY will sustain by reason of such delay, it is therefore agreed that MOTOROLA will pay to the COUNTY liquidated damages as set forth below:

- a) The sum of \$4,000.00 per day for Backbone System Acceptance Test Plan (ATP)
 completion; and \$1,700.00 per day for the completion of the Console ATP for each day in excess of the allotted schedule prescribed in the Project Implementation Plan, up to a maximum amount of \$424,000.00 for the entire RCS project.
- b) MOTOROLA will be given a thirty (30) day grace period from the due date specified in the Project Implementation Plan before liquidated damages will be effective. If MOTOROLA has not completed the applicable milestone within the thirty (30) grace day period, then liquidated damages shall be effective retroactive to the first day following the specified completion date.
- c) Liquidated damages accrued during the performance of the Agreement will be waived by the COUNTY if MOTOROLA meets the scheduled delivery date for RCS System Acceptance.

If this Agreement is not fully and completely performed within the time set forth in the Project Implementation Plan, the COUNTY's Contracting Officer shall have the right to increase the

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time for such performance and to waive the above damages. Nothing in this Section shall be construed as giving MOTOROLA a right to extra time for performance.

If MOTOROLA is delayed by reason of changes or extra services ordered by the COUNTY, or by conditions expressed in this section, the time for performance of this Agreement may be extended commensurately by agreement by the Contracting Officer and MOTOROLA.

MOTOROLA will be relieved during the period of such extension of any claim for liquidated damages.

This section may be invoked or waived at the sole option of the COUNTY. The COUNTY must notify MOTOROLA by certified mail in accordance with Section 6. NOTICES of its intent to levy or waive any liquidated damages under this Article. The foregoing will be the COUNTY's sole remedy for delays in the delivery of equipment or the performance of services.

MOTOROLA's right to proceed shall not be terminated nor MOTOROLA be charged with resulting damage if:

- 2.1 The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of MOTOROLA, including but not restricted to acts of the public enemy, acts of the COUNTY in either its sovereign or contracting capacity, acts of another contractor in the COUNTY, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both MOTOROLA and such subcontractors or suppliers, and;
- 2.2 MOTOROLA, within 10 days from the beginning of any such delay (unless the Contracting Officer grants a further period of time before the date of final payment under the contract), notifies the Contracting Officer in writing of the causes of delay in (2.1) above

The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgement, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties.

As used in paragraph (2.1) of this clause, the terms, "subcontractors or suppliers" means subcontractors or suppliers at any tier.

3. INVOICES

All deliveries must be accompanied by invoices or delivery tickets. A copy of each invoice or delivery ticket must be signed by the individual accepting delivery. Invoices shall include item, description, quantity, delivery point, price, terms, purchase order number, sub-order number (if

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applicable to a blanket purchase order) and any data relative to the shipment. <u>Original</u> invoice shall be mailed to COUNTY Auditor and Controller, Room 306, 1600 Pacific Highway, San Diego, California, 92101. Discounts will be calculated from receipt of merchandise or invoice, whichever is later.

4. SOFTWARE LICENSE

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929 930 MOTOROLA hereby grants to the COUNTY a nonexclusive and fully paid-up perpetual, software license, to use the 800 MHz system software as defined in the Agreement and described in this Agreement and related documentation, including a copy of the License which is included as Exhibit D.

5. SOURCE CODE

By executing this Agreement, MOTOROLA is making a firm commitment to support the software provided to the COUNTY. However, in order to address any concerns that the COUNTY may have regarding MOTOROLA's ability to support the software, MOTOROLA proposes the following: "In the event that: (i) MOTOROLA discontinues support for an item of MOTOROLA owned software furnished under the Agreement and subsequent releases of such software, if any; and (ii) the COUNTY is, and remains, not in breach of the Agreement or other applicable license agreement; then at the COUNTY's request, MOTOROLA will, at MOTOROLA's option, either recontinue support for such software item; arrange for support by an entity that has access to the source code and related documentation with all revisions, corrections, enliancements and other changes made to the software, so that the source code constitutes a human readable program for the then current release of the software and supported by the then current version of its related documentation for such software item; or grant the COUNTY a license, under separate terms and conditions, to use MOTOROLA-owned Source code corresponding to such software for the COUNTY's internal use by the COUNTY's employees and the COUNTY's agents, consultants, and independent contractors (provided that : prior to their access to such source code, the COUNTY's agents, consultants, and independent contractors enter into a non-disclosure agreement in form and substance that is reasonably satisfactory to MOTCROLA) solely as a trouble analysis aid for isolating, diagnosing, and fixing problems in such software.

6. FIRM PRICING STRUCTURE

All pricing quoted in this Agreement, except the prices in Volume III shall be firm for the term of the Agreement; shall apply to all equipment, software, services and supplies; and shall also apply to any equipment changes or additional equipment which the COUNTY may purchase under this Agreement. The COUNTY shall allow MOTOROLA to increase the discount at any time during the term of the Agreement.

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MOTOROLA represents that the products and services under this Agreement have not been previously sold or offered for sale under substantially similar Terms & Conditions and in substantially similar quantities to any other State, County or City at a lower price than the price offered to the COUNTY on products sold under this Agreement.

The prices reflected in Volume III will remain valid for a period of ten (10) years from final system acceptance. Items may be added to Volume III at any time by mutual consent of MOTOROLA and the COUNTY. MOTOROLA shall extend all price reductions to the COUNTY. Price increases shall only be allowed subject to general increases in MOTOROLA's published price list. MOTOROLA may increase prices listed up to a maximum not to exceed the lesser of the Consumer Price Index ("CPT") or three (3) percent. The initial base price shall be the prices listed in this Agreement. Thereafter, the base price shall be the latest adjusted price as established in accordance with the terms of this Section. In no event will prices increase more than once during any COUNTY fiscal year.

At any time during its performance of this Agreement, MOTOROLA may implement changes in the products set forth in Volume III, modify the drawings and specifications relating thereto, or substitute therefor different products; provided, however, that any such changes, modifications or substitutions, under normal and proper use: (i) shall not materially or adversely affect physical or functional interchangeability or performance (except where there is written agreement between the parties that specific characteristics will be so affected); (ii) shall not detract from the safety of the product; and (iii) shall be type-accepted by the appropriate authority, if required. Any replacement products provided by MOTOROLA pursuant to this section shall be offered in accordance with the pricing structure set forth above.

7. FCC/FAA LICENSE

The COUNTY is responsible for obtaining any licenses required by the Federal Communications Commission (FCC) and the Federal Aviation Administration (FAA). COUNTY and MOTOROLA expressly agree that the project implementation is contingent upon receipt of proper FCC/FAA licensing. MOTOROLA's performance of this Agreement shall ensure that all applicable requirements of the FCC/FAA licensing are met by the 800 MHz Trunked Radio Communications System.

8. IMPLEMENTATION SCHEDULE

Preliminary and final implementation schedules and final system design shall be prepared by MOTOROLA. The final implementation schedule shall indicate in detail all the 800 MHz system tasks, related subtasks to be performed and the associated dates the tasks are to be performed and a final completion date. No equipment shall be scheduled for delivery more than eight (8) weeks prior to its scheduled installation date without approval of the COTR. The final implementation schedule and system design shall be subject to approval by the COUNTY and shall be provided by MOTOROLA within thirty (30) days after final system design approval.

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The Final Implementation Schedule as approved by the COUNTY shall be attached hereto and becomes a part of this Agreement.

9. NON INTERFERENCE WITH RCS AGENCIES

MOTOROLA's performance of work under this Agreement must not interfere unnecessarily with the operation of any RCS agency.

10. INVENTORY

MOTOROLA agrees to maintain an inventory report which includes a line item for COUNTY asset or property tag ID#.

11. INTERFACE WITH OTHER VENDORS

MOTOROLA agrees to cooperate with other vendors supplying equipment to, or performing services for, the COUNTY as may be requested by the COUNTY. MOTOROLA specifically agrees not to unreasonably withhold technical data deemed necessary by the COUNTY for interface with equipment or software system supplied to the COUNTY by other vendors. This shall not be construed, however, as implying that MOTOROLA will provide unlimited documentation to other vendors or that special services will be provided. Any request by the COUNTY that MOTOROLA cooperate with other vendors shall recognize MOTOROLA's right to protect its proprietary interests and intellectual property.

12. ADVERTISING/PROMOTIONAL TOURS

To protect the privacy, operational effectiveness and integrity of the COUNTY's use of the 800 MHz system, MOTOROLA shall refrain from any advertising of the COUNTY's 800 MHz system and refrain from arranging or encouraging promotional or other visits to the COUNTY, except as specifically approved in advance by the COUNTY. However, the COUNTY agrees that it shall occasionally allow such tours and advertising unless they unreasonably interfere with the communications center or other COUNTY operations.

13. STATE-OF-THE-ART EQUIPMENT

The parties acknowledge that the COUNTY desires to have the most current equipment and software for the system at the time of installation. If MOTOROLA becomes aware that improved, compatible equipment or software products are available thirty (30) days prior to shipment, MOTOROLA will notify the COUNTY. In its notice to the COUNTY, MOTOROLA will provide an assessment, to the extent such information is available, of the advantages, disadvantages and cost impact to the COUNTY, if any, of utilizing such alternative equipment or software. The COUNTY will advise MOTOROLA in writing within ten (10) days of its intention to utilize or disregard such alternative equipment or software; failure of the COUNTY

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to advise MOTOROLA will be deemed an election by the COUNTY to disregard the utilization of the alternate equipment or software.

14. EQUIPMENT COMPATIBILITY

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- 14.1 MOTOROLA agrees that the hardware and/or software, together with any and all associated equipment it will provide, as otherwise specified in the Agreement and described in the Statement of Work will perform individually and as an integrated System in accordance with the specifications and representations stated in this Agreement. This Agreement does not extend to the performance or integration of the System equipment into a different system generally nor specifically to System equipment in combination with products, elements or components not supplied by MOTOROLA.
- 14.2 During the performance of this Agreement, it is understood that MOTOROLA may implement changes in the products set forth in this Agreement or substitute products of more recent design. This shall be allowed provided that any such changes, modifications and substitutions, under normal use shall not materially or adversely affect physical or functional interchangeability or performance, or result in price changes except where there is prior written agreement between MOTOROLA and the COUNTY that specific characteristics will be so affected and/or price so affected.

15. FREIGHT/DELIVERY

MOTOROLA assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance and other services associated with delivery of the equipment and materials under this Agreement. MOTOROLA will notify the COUNTY of impending shipments not later than ten (10) County work days prior to actual shipment. All costs associated with shipment and/or transportation and handling of any item purchased under this Agreement are included in the total contract amount. All freight must be F.O.B. destination, prepaid and shall be unloaded at COUNTY specified sites by the carrier or MOTOROLA.

16. PATENT INDEMNIFICATION

MOTOROLA agrees to defend, at its expense, any suits against the COUNTY based upon a claim that any products furnished hereunder directly infringes a U.S. Patent or copyright, and to pay costs and damages finally awarded in any such suit, provided that the COUNTY promptly notifies MOTOROLA in writing and at MOTOROLA's request and expense is given control of said suit and all requested assistance for defense of same. If the use or sale of any such product furnished hereunder is enjoined as a result of such suit, MOTOROLA, at its option, and at no cost to the COUNTY, shall obtain for the COUNTY the right to use or sell such product, modify the product to make it non-infringing or substitute an equivalent product reasonably acceptable to the COUNTY and extend this indemnity thereto or, if none of the foregoing remedies are reasonably available to MOTOROLA, accept return of the product and reimburse the COUNTY

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the full purchase price therefor less a reasonable charge for reasonable wear and tear. This indemnity does not extend to any suit based upon any infringement or alleged infringement of any patent or copyright by the combination of any product(s) firmished by MOTOROLA and other elements nor does it extend to any product(s) of the COUNTY's design or formula.

17. STANDARDS OF PERFORMANCE AND ACCEPTANCE TESTING

MOTOROLA shall certify in writing to the COUNTY when the 800 MHz System or subsystems supplied by MOTOROLA are installed and ready for use. The 800 MHz System or subsystems will be ready for use upon successful completion of acceptance testing as set forth in the Acceptance Test Plan (ATP). Acceptance shall be deemed to have occurred only when the COTR has provided MOTOROLA with written certification of system or subsystem acceptance. MOTOROLA shall record the test results in conjunction with COUNTY staff and provide the COUNTY with error-free test results for COUNTY verification. The system or subsystem shall not be accepted until the standards of performance are met. Prior to acceptance, the COUNTY will obtain RCS Board review and approval. Such standards of performance and acceptance testing shall conform to specifications as defined in Volume II - Statement of Work.

18. PROJECT/CONTRACT FINANCIAL REPORTING

MOTOROLA shall, as part of the monthly status report; provide monthly financial reporting of all contract milestones, deliverables, invoices, change orders and task orders.

19. PAYMENT APPROVAL PROCESS

Payment to MOTOROLA will be made by the COUNTY subject to the following process:

- COUNTY and MOTOROLA project managers will review items/services delivered.
- If COUNTY approves deliverable/milestone, approval will be provided on written sign-offform. Prior to payment, the COUNTY will obtain RCS Board review and approval.
- MOTOROLA will invoice monthly based on approved sign-off forms received from COUNTY.
- COUNTY will make payments based only on approved sign-off forms prior to month-end.
- COUNTY will make payment within 30 days after receipt of invoice from MOTOROLA.

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20. WARRANTY

 Warranty of the RCS System and its equipment shall be in accordance with Exhibit C which is incorporated in the Agreement.

21. FORCE MAJEURE

Neither MOTOROLA nor the COUNTY will be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts will include, not be limited to, acts of God; fire; strikes; material shortages; compliance with laws or regulations; riots; acts of war, or any other conditions beyond the reasonable control of the party or parties. Delays as identified herein may cause an impact on the period of performance stated in the Agreement.

22. REQUIRED APPROVALS

Where agreement, approval, acceptance, or consent by either party is required by any provision of this Agreement, such action will not be unreasonably delayed or withheld.

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County of San Diego PRI Regional Communications System

EXHIBIT A
PRICING SHEET

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20.245,141,47	view Equipment and Vendor Services:		0.00	
			28.24	5.141.47

Orest Services:

Detrillad City				
Detailed System Design				
Detailed Implementation Plenning				7,471,320.75
METOWEVE PROCESSORESHIP Comment	•		711	316,916,75
MICTOWAY9 Introduction Management				171,279,26
, and a promition control of			J	420,964,00
Installation & Integration		i		772,788.00
Upungation & Accordance Texts		•		1,639,116,91
Operation Cocumentation				1,285,191,25
Post-Acceptance System Manager				271,363.25
Training Support				777,370,00
Program Manugament				\$7.7.37.0,QJ
a. a.u. cudieddalliGU				109,156.50
Project Administration				715,200.00
				351,000,00
Total Diroci Bandon				

, Total Direct Services

8,301,664.66
Motorcia Confidential and Proprietary

12/28/95

County of San Olego Regional Communications System

Indirect Services:

Factory Staging & Implementation Services CCSI Factory Staging CCSI Factory Supplied Cabling RNG Factory Staging

870,928.88 302,931.78 0.00

Total Indirect Services

1,173,860,66

Total Services

9,475,525,32

Office Costs:

System Warrenty Period Meintenance - FNE (1-Year, 5x8)

Voice, Data, & Microwave Infrastructure RNG Hardware/Software

634,920,63 0,00

Training Freight

519,647.62 470,649.82

Performance Bonds (25% Perf.: 10% Payment)

470,649,82 51,250.00

Total Other Costs

1,684,468,08

Total Services and Other Casts

Total System Before Tax:

Tax (7% of equipment):

1,977,159.90

System Discount (4.34%)

-1,710,182,85

Grand Total (who Microwave; who MDTs/AVL)

39,672,111.92

Net estimated excrow earnings attributable to Equipment and Services

-2.210,000.00

Net funded Motorois ience amount

37,462,111,92

12/28/95

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EXHIBIT B MILESTONE PAYMENT SCHEDULE AND TERMS

- 1. Upon acceptance by the County of the detailed Subsystem Overviews, Subsystem Descriptions, System Diagrams and Equipment Lists, Motorola shall bill for and be paid the sum of \$3,967,211.00
- 2. Upon acceptance by the County of the detailed system Acceptance Test Procedures, Motorola shall bill for and be paid the sum of \$3,967,211.00

COUNTY acceptance or rejection of the documents listed in this Exhibit shall be provided in writing within fifteen calendar days after the documents are received by the COUNTY.

- 3. Upon receipt, installation and acceptance of the backbone equipment, Motorola shall bill for and be paid for the following, including tax and freight on a sub-system basis (unless otherwise mutually agreed):
 - a) \$10,002,172.66 upon receipt of equipment.
 - b) \$869,754.14 upon completion of installation on a site by site basis.
- 4. Upon receipt and acceptance of the following direct services, Motorola shall bill for and be paid the following amounts:
 - a) Delivery of Final Detailed System Design Documentation: \$1,813,475.30
 - b) Factory Staging Support due upon shipment of staged equipment: \$1,193,120,46
 - c) Optimization and Acceptance Services and Other Costs due upon conditional acceptance of 800 Mhz voice system: \$1,576,937.55
 - d) Training Support Courses (as each course is completed): \$261,868.31
 - e) Program Management Services: \$15,670.17 per month beginning 30 days after contract execution for a period of 23 months.
 - f) Program Administration Services: \$7,690.48 per month beginning 30 days after contract execution for a period of 23 months.
- 5. The balance of all field equipment, (\$10,064,859.00) to include portables, mobiles, control stations, and all antenna, line and connector equipment shall be billed upon receipt at the prices set forth in Volume III or such other prices as mutually agreed and recognized by Change Order or Task Order issued under this AGREEMENT, including tax and freight.

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- 6. Conditional Acceptance / Beneficial Use of the 800 Mhz System shall constitute the basis for a payment of \$2,167,283.12.
- 7. Final Acceptance of all subsystems shall constitute the basis for a payment of \$3,250,924.68 which shall include retention of all remaining amounts and the balance of the contract price, excluding task orders / options.

Receipt of mobile, portable and control station equipment is defined to occur upon delivery and signed receipt by a County representative at a location designated by the County at least 30 days prior to shipment. Receipt of all other equipment is defined to occur upon delivery and signed acknowledgement of delivery by a County representative at a location designated by Motorola within San Diego County. The County will sign the acknowledgement of delivery within 5 days of request of Motorola.

Payment shall be made within 30 days of receipt of a properly executed and approved invoice by the Auditor / Controller.

Schedules for all items are set forth in Volume II. No payments shall be made for equipment delivered in advance of the agreed schedules. Change or Task Orders which modify the delivery schedules and milestones set forth in Volume II shall adjust the above payment schedules. Any such Change or Task Order shall set forth revised pricing and payment schedules based upon mutual agreement in the case of Change Orders exceeding. \$25,000.

LICENSE AGREEMENT

This License Agreement is between MCTOROLA, INC., a Delaware Corporation, having an office at 1301 East Algonquin Road, Schaumburg, Illinois 60196 ("Motorota") and the Licensee named below ("Licensee").

WHEREAS, Motorola has developed or acquired, or will develop or acquire Programs (as hereinafter defined) and/or Programs for incorporation into Motorola Products;

WHEREAS, when the Licensee purchases, from time to time through various purchase contracts or otherwise, Programs and/or Programs incorporated into Motorola Products, the Licensee acquires certain rights in such Programs and may utilize such Programs in accordance with this License Agreement; and

WHEREAS, at the time of purchase by Licensee, a Software License Level may be indicated for each Program or Program contained within a Motorola Product on such purchase contracts or otherwise.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter expressed, Licensee and Motorola agree as follows:

Section 1 DEFINITIONS

- 1.1 "LICENSEE" shall mean the licensee indicated at the end of this Agreement.
- 1.2 "LICENSED SUBSIDIARIES" shall mean all Subsidiaries of Licensee that have executed this Agreement or an Addendum hereto agreeing that the terms and conditions of this Agreement shall apply to such Subsidiary. Upon becoming a Licensed Subsidiary, such Subsidiary shall be treated for all purposes as a Licensee hereunder and shall be bound by all of the terms and conditions hereof.
- 1.3 "LICENSEE'S PERSONNEL" shall mean any person who is directly employed by the Licensee.
- 1.4 "MOTOROLA PRODUCTS" shall mean products designed, manufactured, acquired and/or sold by Motorola, Inc., as identified in purchase contracts or as otherwise identified.
- 1.5 "PHOGRAMS" shall mean object code software for use in conjunction with Motorola Products or for use within Motorola Products.
- "SUBSIDIARY" shall mean any corporation, company, or other entity more than fifty percent (50%) of whose outstanding shares of stock entitled to vote for the election of directors (other than any shares or stock whose voting rights are subject to restriction) is owned or controlled by a party hereto, directly or indirectly, now or hereafter, but any such company or other entity is a Subsidiary only so long as such ownership or control exists.
- 1.7 "TRANSFEREE" shall mean a third party corporation, company, or other entity (other than a Licensed Subsidiary) that may acquire rights in certain Programs having a Level Two Software License through a written agreement with the Licensee.

Section 2 LICENSE

- 2.1 LEVEL ONE SOFTWARE LICENSE: Motorola hereby grants to Licensee a personal, non-exclusive, and nontransferable Level One Software License for Programs purchased by Licensee which are identified, in writing, as Level One Software, and for any such Programs that do not have an expressly written software level. A Level One Software License shall contain the following terms and provisions:
 - 2.1.1 Licensee may use such Programs solely for the intended purpose of the Programs;
 - 2.1.2 Licensee may only use Programs in the United States, in a country expressly stated in purchase contracts pertaining to the Programs, or in a country that is otherwise identified in a written agreement that is signed by at least Motorola;
 - 2.1.3 Licensee shall not disseminate, disclose, or make available the Programs, or any parts thereof; in any form to a third party without the express written consent of Motorola;
 - 2.1.4 Licensee shall not disassemble or reverse engineer the Programs, or any portion thereof, without the express written consent of Motoroia;
 - 2.1.5 Licensee will take appropriate action, by instruction, agreement or otherwise, with any persons, including Licensee's Personnel, permitted access to the Programs, such that Licensee satisfies its confidentiality obligations under this License Agreement;
 - 2.1.6 Licensee shall not make copies of the Programs without the express written consent of Motorola, except for up to four (4) backup copies;
 - 2.1.7 Title to Programs and any copies thereof, in whole or in part, and all rights in patents, copyrights, trade secrets, and other intellectual properties of such Programs are vested in Motorola;
 - 2.1.8 The Licensee shall include all copyright notices, trademark notices, and other proprietary legends in accordance with Motorola's instructions on all copies of the Programs it makes; and
 - 2.1.9 Licensee acknowledges and agrees that the existence of any copyright notice on any Program shall not be construed as an admission or presumption that publication of such Program has occurred.
- 2.2 LEVEL TWO SOFTWARE LICENSE: Motorola hereby grants to Licensee a personal, non-exclusive, transferable Level Two Software License for such Programs purchased by Licensee which are identified, in writing as Level Two Software. A Level Two Software License shall contain the following terms:
 - 2.2.1 Licensee may use such Programs solely for the intended purpose of the Programs and only in the distributed form of the Programs;
 - 2.2.2 Licensee shall not make copies of the Programs except for four (4) back-up copies; however, this restriction does not include records stored on electronic or magnetic media that have been created by the Programs and used for system management purposes;

Exhibit B

- 2.2.3 Licensee shall not modify, adapt, or merge the Programs;
- 2.2.4 Licensee shall not make the Programs available to a third party that is not bound by a similar License Agreement and does not have a need to know;
- 2.2.5 Licensee may not disassemble, decompile, or otherwise reverse engineer the Programs;
- 2.2.6 Licensee shall pay all applicable sales and use taxes or certify its exemption therefrom;
- 2.2.7 Licensee shall comply with the export regulations of the Office of Export Administration for the United States Department of Commerce;
- 2.2.8 Licensee may transfer such Programs in their entirety to a Transferee, but only if the Transferee uses the Programs under the same License terms and provisions as specified herein from Motorola; and
- 2.2.9 Title to Programs and any copies thereof, in whole or in part, and all rights in patents, copyrights, trade secrets, and other intellectual properties of such Programs are vested in Motorola.
- 2.3 LEVEL THREE SOFTWARE LICENSE: Motorola hereby grants to Licensee a personal, non-exclusive, and nontransferable Level Three Software License for such Programs purchased by Licensee which are identified, in writing, as Level Three Software. A Level Three Software License shall contain the following terms and provisions:
 - 2.3.1 Licensee may use Programs solely for the intended purpose of the Programs;
 - 2.3.2 Licensee may only use Programs at a site, or sites, expressly stated in purchase contracts pertaining to the Programs, or at a site, or sites that are otherwise identified in a written agreement that is signed by Motorola. If a site is not specified, the Licensee may use the Programs only at the facility where the Programs were initially installed;
 - 2.3.3 Licensee shall not disseminate, disclose, or make available the Programs, or any parts thereof, in any form to a third party without the express written consent of Motorcia;
 - 2.3.4 Licensee shall not disassemble or reverse engineer the Programs, or any portion thereof, without the express written consent of Motorola;
 - 2.3.5 Licensee will take appropriate action, by instruction, agreement or otherwise, with any persons, including Licensee's Personnel, permitted access to the Programs, such that Licensee satisfies its confidentiality obligations under this License Agreement;
 - 2.3.6 Licensee may make copies of the Programs, but only in sufficient quantities to service the site, or sites, expressly stated in purchase contracts pertaining to the Programs or otherwise identified in a written agreement that is signed by at least Motorcia. If a site is not specified, the Licensee may only make copies of the Programs in sufficient quantities to service the facility where the Programs were initially installed;

- 2.3.7 Title to Programs and any copies thereof, in whole or in part, and all rights in patents, copyrights, trade secrets, and other intellectual properties of such Programs are vested in Motorola;
- 2.3.8 The Licensee shall include all copyright notices, trademark notices, and other proprietary legends in accordance with Motorola's instructions on all copies of the Programs it makes; and
- 2.3.9 Licensee acknowledges and agrees that the existence of any copyright notice on any Program shall not be construed as an admission or presumption that publication of such Program has occurred.

Section 3 PROVISIONS AND CONDITIONS FOR SOFTWARE LICENSES

- 3.1 Licensee agrees to pay for each Program, a one-time, lump-sum, License fee. Each such License fee shall be due and payable upon receipt of invoice unless otherwise specified. Service charges at the maximum rate permitted by applicable law may be invoiced on accounts more than ten (10) days past due and shall be due and payable upon receipt of invoice for such service charges.
- *3.2 The License fee for each Program will be listed in Motorola's current Price Book, current addendum to such Price Book, or other tangible form. License fees in the Price Book are subject to change without notice. Orders for each Program will be billed at the License fee in effect on the day Licensee's order is entered.
- 3.3 Licensee shall pay all sales, use and excise taxes, and any other assessments in the nature of taxes, however designated:
 - 3.3.1 on each Program or its License or use;
 - 3.3.2 resulting from this License Agreement; or
 - 3.3.3 on any amount payable for any services furnished under this License Agreement, exclusive of personal property taxes assessed on the Program and taxes based on Motorcia's net Income, unless Licensee furnishes Motorcia with a certificate of exemption from payment of such taxes which is in a form reasonably acceptable to Motorcia.
- 3.4 Licensee shall not assign or transfer this License Agreement or sublicense any Program purchased under this License Agreement without the prior written consent of Motorola. Any prohibited assignment, transfer or sublicense shall be null and void.
- 3.5 Motorola reserves the right to assign this License Agreement, encumber or sell any Program, or subcontract any of its obligations hereunder, either in whole or in part, without notice to or the consent of Licensee.
- 3.6 Motorola shall not be responsible for support or field service of any Program under this License Agreement. Any maintenance by Motorola, if available, shall be by separate agreement on Motorola's then current terms and conditions and at Motorola's then current prevailing rates for such maintenance.

Section 4 TERM OF LICENSE AGREEMENT

- 4.1 This License Agreement shall have a term of ten (10) years and shall be applicable to all Programs and/or Programs contained within Motorola Products that are purchased, or otherwise acquired, by Licensee; or Transferee, during the term of this License Agreement.
- 4.2 This License Agreement may be terminated prior to the expiration of the ten year term for the reasons set forth in Section 6. For premature termination, the procedures specified in Section 6 must be followed.

Section 5 CONFIDENTIALITY

- 5.1 Licensee shall keep each Program confidential and shall not use any Program for any purpose other than its intended purpose.
- 5.2 Licensee shall restrict access to each Program to Licensee's Personnel who have a need to know.
- 5.3 Licensee shall not disclose or disseminate Programs, or any parts thereof, to any third party during the term of this License Agreement and for a period of ten years after the termination of this License Agreement, without the express written consent of Motorola.
- 5.4 The obligations of this Section 5 shall survive the expiration, termination, or cancellation of this License Agreement for any cause.
- 5.5 The obligations of this Section 5 shall not apply to information that:
 - 5.5.1 is or becomes publicly known through no wrongful act on the part of Licensee;
 - 5.5.2 Is already known to Licensee at the time of disclosure;
 - 5.5.3 Is rightfully received by Licensee from a third party without breach of this License Agreement; or
 - 5.5.4 is explicitly approved for public release by written authorization of Motorola.

Section 6 TERMINATION

- 6.1 If either party commits a material breach of any of its obligations set forth herein, in a purchase contract for Programs, or other agreement regarding Programs, the other party may give written notice of termination to the breaching party. The written notice of termination shall specify the material breach and must specify whether the entire License Agreement is being terminated or whether the License Agreement is being terminated with respect to a particular Program, or particular Programs. Upon receipt of the written notice of termination, the breaching party shall have sixty (60) days to cure the material breach. In the event that the material breach is not cured during the sixty (60) days, the License Agreement is terminated as specified in the written notice of termination.
- 6.2 The termination set forth in Section 6.1 shall not be exclusive of any other remedies or means of redress to which the non-breaching party may be lawfully entitled.

6.3 Upon termination of this License Agreement or termination of this License Agreement for any particular Program(s), Licensee shall promptly forward to Motorola, or to Motorola's designee, all copies of Programs for which this License Agreement is terminated.

Section 7 WARRANTY

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- 7.1 For the first one (1) year following its Initial shipment, Motorola warrants that, when properly used, its Programs will be free from reproducible defects that cause a material variance from its published specification. However, Motorola does not warrant that Program operation will be uninterrupted or error-free, that each defect will be corrected, or that any Program will meet Licensee's particular requirements.
- MOTOROLA'S TOTAL LIABILITY AND LICENSEE'S SOLE REMEDY FOR ANY WARRANTED PROGRAM SHALL BE LIMITED TO, AT MOTOROLA'S OPTION, PROGRAM REPLACEMENT OR THE PAYMENT OF LICENSEE'S ACTUAL DAMAGES, NOT TO EXCEED THE SUMS PAID TO MOTOROLA FOR THE MOTOROLA PRODUCT INCORPORATING THE DEFECTIVE PROGRAM. THIS WARRANTY EXTENDS ONLY TO THE FIRST LICENSEE; SUBSEQUENT TRANSFEREES ACCEPT THESE PROGRAMS "AS IS" AND WITHOUT WARRANTIES OF ANY KIND. THIS WARRANTY REPLACES ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 8 LIMITATION OF LIABILITY

- 8.1 The entire Motorola liability to Licensee for damages concerning performance or nonperformance by Motorola under the License Agreement or in any way related to the subject matter of the License Agreement, regardless of whether the claim for such damages is based in contract, ton or otherwise, and Licensee's sole and exclusive remedy shall be limited to the payment by Motorola of actual damages not to exceed the total License fee paid by Licensee for the Program, or Programs that caused the damages or is the subject matter of or is directly related to such claim.
- IN NO EVENT SHALL MOTOROLA BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF USE, TIME OR DATA, INCONVENIENCE, COMMERCIAL LOSS, LOST PROFITS OR SAVINGS) TO THE FULL EXTENT SUCH MAY BE DISCLAIMED BY LAW EVEN IF MOTOROLA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR FOR ANY CLAIM AGAINST LICENSEE BY ANY OTHER PARTY.

Section 9 INDEMNIFICATION

If promptly notified in writing, Motorola will defend any suit against Licensee that claims that U.S. patents, copyrights, or trade secrets of another have been infringed solely by Motorola's unaltered Programs and will pay any associated costs or damages finally awarded. Upon Motorola's request, Licensee agrees to reasonably assist in any defense and surrender control of the suit to Motorola. Motorola may elect, at any time, to modify or replace these Programs with equivalent non-infringing items, obtain the right to continue using the Programs or, if these remedies are not reasonably available, terminate this License Agreement with respect to such Programs. Motorola shall have no liability for infringement that arises from any modification of Motorola's Programs by Licensee or from Licensee's combination of Motorola's Programs with another's.

Section 10 DISPUTES

- Motorola and the Licensee will attempt to settle any claim or controversy arising out of this Agreement through consultation and negotiation in good faith and a spirit of mutual cooperation. If those attempts fail, then the dispute will be mediated by a mutually acceptable mediator to be chosen by Motorola and the Licensee within thirty (30) days after written notice by one of the parties demanding non-binding mediation. Neither one of the parties may unreasonably withhold consent to the selection of a mediator, and Motorola and the Licensee will share the cost of the mediation equally. By mutual agreement, however, Motorola and Licensee may postpone mediation until both parties have completed some specified but limited discovery about the dispute. The parties may also agree to replace mediation with some other form of non-binding alternate dispute resolution procedure ("ADR").
- Any dispute which cannot be resolved between the parties through negotiation or mediation within two (2) months of the date of the initial demand for it by one of the parties may then be submitted to a court of competent jurisdiction in lillinois. Both Motorola and Licensee consent to jurisdiction over it by such a court. The use of any ADR procedures will not be considered under the doctrine of laches, waiver or estoppel to affect adversely the rights of either party. Nothing shall prevent either of the parties from resorting to the judicial proceedings mentioned in this paragraph if (a) good faith efforts to attempt resolution of the dispute under these procedures have been unsuccessful or (b) interim relief from the court is necessary to prevent serious and irreparable injury to one of the parties or others.

Section 11 GENERAL PROVISIONS

- 11.1 This License Agreement constitutes the complete and exclusive statement of the agreement between Motorola and Licensee, and supersedes all oral or written proposals, prior agreements and other prior communications between the parties, concerning the subject matter of the License Agreement.
- 11.2 All formal notices, consents and other communications required or permitted under this License Agreement shall be in writing and shall be sent in such a way as to assure receipt by the other party. Either party may change its address for formal notices by written notice to the other party.
- 11.3 This License Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.
- 11.4 No representation or promise relating to, and no amendment of, this License Agreement shall be binding unless it is in writing and signed by both parties.
- 11.5 The terms and conditions of this License Agreement shall prevail notwithstanding any variance with the terms and conditions of any order submitted by Licensee.
- 11.6 Motorola shall not be liable for any failure to perform due to causes beyond its reasonable control.
- 11.7 No waiver by a party of any breach of any provision of this License Agreement shall constitute a waiver of any other breach of that or any other provision of this License Agreement.

Exhibit B

- 11.8 Licensee recognizes that applicable Federal Communications Act and other statutes, laws, ordinances, rules, and regulations may change from time to time and that accordingly Motorola in its sole discretion has the right without liability to modify this License Agreement to comply with such change.
- 11.9 In the event that any of the provisions contained in this License Agreement are held to be unenforceable, this License Agreement shall be construed without such provisions.
- 11.10 No action, regardless of form, arising out of the License Agreement may be brought by Licensee more than one (1) year after the cause of action has arisen.
- 11.11 When, at the time a Program or Program contained within a Motorola Product is shipped, a Software Level is not indicated in the purchase contract or otherwise, such Program shall be deemed Level One Software. The Software Level of a Program may be amended by a written agreement signed by Motorola.

ACCEPTED AND APPROVED AS OF	~,	• .
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MOTOROLA:	LICENSEE:	
MOTOROLA INC.	PURCHASER	•
By:(Authorized Signature)	Bv:	•
(Authorized Signature)	· ·	. (Authorized Signature)
Name: (Print - Block Letters)	Name:	
(Print - Block Latters)		(Print - Block Letters)
Title: [Print - Block Letters)	Title:	
(^p rint - Block Letters)		(Print - Block Letters)
Date:	Date:	
N _e	Customer #:	,
Address for Formal Notices: Address	for Formal Notices:	
Motorola, Inc. 303 East Algonquin Road Schaumburg, Illinois 60196 httn.: Intellectual Property Departme		, #
LICENSED SUBSIDIARIES (If a	ny) ; <u> </u>	
NAME: TITLE: DATE:		

U.S. Revised 5/92

The following page(s) contain the backup material for Agenda Item: Resolution of the City Council of the City of National City, waiving the formal bid process consistent with National City Municipal Code Section 2.60.260 regarding cooperative purchasing and authorizing the City (Buyer) to piggyback the National Joint Pow

CITY OF NATIONAL CITY, CALIFORNIA COUNCIL AGENDA STATEMENT

MEETING DATE: July 24, 2018 AGENDA ITEM NO.

ITEM TITLE:

Resolution of the City Council of the City of National City, waiving the formal bid process consistent with National City Municipal Code Section 2.60.260 regarding cooperative purchasing and authorizing the City (Buyer) to piggyback the National Joint Powers Alliance Contract #120716-NAF to award the purchase and build-out of two (2) 2019 Ford Transit Connect Vans (S7E) XL LWB to National Auto Fleet Group in an amount not to exceed \$58,506.68 for the Engineering and Public Works Facilities Maintenance Division.

PREPARED BY: Ray Roberson, Management Analyst II DEPARTMENT: Engineering/Public Works

APPROVED BY:

APPROVED:

APPROVED:

PHONE: (619) 336-4583

EXPLANATION:

See attached explanation.

FINANCIAL STATEMENT:

ACCOUNT NO.

644-416-223-511-0000 (Equipment Replacement Reserve): \$58,506.68 \$70,000 is appropriated in the FY2019 budget for utility vans.

ENVIRONMENTAL REVIEW:

N/A

ORDINANCE: INTRODUCTION: | FINAL ADOPTION: |

STAFF RECOMMENDATION:

Adopt Resolution awarding the purchase and build-out of two (2) utility vans for the Engineering and Public Works Facilities Maintenance Division.

BOARD / COMMISSION RECOMMENDATION:

N/A.

ATTACHMENTS:

- Explanation
- 2. National Auto Fleet Group Quote
- 3. National Joint Powers Alliance Contract #120716-NAF
- Resolution

Explanation:

As part of the FY 2019 annual budget, City Council approved funding through the Equipment Replacement Reserve for the purchase of two (2) utility vans for the Engineering and Public Works Facilities Maintenance Division. Staff seeks Council authority to waive the formal bid process consistent with National City Municipal Code Section 2.60.260 regarding cooperative purchasing and authorize the City (Buyer) to piggyback the National Joint Powers Alliance Contract #1207-16-NAF to award the purchase and build-out of two (2) utility vans to National Auto Fleet Group in an amount not to exceed \$58,506.68. National Auto Fleet Group will subcontract with Commercial Van Interiors for the build-out of the utility vans.

NCMC Section 2.60.260 provides authority to the purchasing agent to join with other public jurisdictions to take advantage of cooperative purchasing opportunities, including but not limited to any federal, state or local agency pricing program or structure that is determined by the purchasing agent to allow a procurement that is in the best interests of the City. The purchasing agent may buy directly from a vendor at a price established through competitive bidding by another public agency whose procedures have been determined by the purchasing agent to be in substantial compliance with the City's procurement procedures, irrespective of the contracting limits of that jurisdiction or agency, even if the City had not initially joined with that public agency in the cooperative purchase.

National City's purchasing staff has confirmed that the National Joint Powers Alliance Contract #120716-NAF with National Auto Fleet Group was competitively bid through a Request for Bid (RFB) and bid process, and that the respective procurement procedures are in substantial compliance with those of National City.



National Auto Fleet Group

490 Auto Center Drive, Watsonville, CA 95076 [855] 289-6572 • [855] BUY-NJPA • [831] 480-8497 Fax Fleet@NationalAutoFleetGroup.com

7/3/2018

QuoteID: 7424

Order Cut Off Date: TBA

Mr Tony Gaut City of National City 1726 Wilson Ave

National City, California, 91950

Dear Tony Gaut,

National Auto Fleet Group is pleased to quote the following vehicle(s) for your consideration.

Two (2) New/Unused (2019 Ford Transit Connect Van (S7E) XL LWB w/Rear Symmetrical Doors, Composite Partition) and delivered to your specified location, each for

	One Unit	Extended Unit's (2)
Contract Price	\$25,335.34	\$50,670.68
Composite Partition	\$1,556.24	\$3,112.48
Tax (8.7500 %)	\$2,353.01	\$4,706.02
Tire fee	\$8.75	* \$17.50
Total	\$29,253.34	\$58,506.68

⁻ per the attached specifications.

This vehicle(s) is available under the **National Joint Powers Alliance Contract 120716-NAF**. Please reference this Contract number on all purchase orders to National Auto Fleet Group. Payment terms are Net 30 days after receipt of vehicle.

Thank you in advance for your consideration. Should you have any questions, please do not hesitate to call.

Sincerely,

Jesse Cooper

Account Manager

Email: Fleet@NationalAutoFleetGroup.com

Office: (855) 289-6572 Fax: (831) 480-8497 Quoting Department

Account Manager

Fleet@NationalAutoFleetGroup.com

(855) 289-6572













GWC.

In order to Finalize your Quote, please submit this purchase packet to your governing body for Purchase Order Approval. Once you issue a Purchase Order please send by:

Fax: (831) 480-8497

Mail: National Auto Fleet Group

490 Auto Center Drive Watsonville, CA 95076

Email: Fleet@nationalautofleetgroup.com

We will then send a W-9 if you need one

Please contact our main office with any questions: 1-855-289-6572

Vehicle Configuration Options

ENGINE	
Code	Description
992	ENGINE: 2.0L GDI I-4 GAS, -inc: auto start/stop system and EcoMode (STD)
TRANSM	IISSION
Code	Description
****	TRANSMISSION: 8-SPEED SELECTSHIFT AUTOMATIC, (STD)
PRIMAR	Y PAINT
Code	Description
Z2	FROZEN WHITE
PAINT S	CHEME
Code	Description
	STANDARD PAINT
SEAT TY	PE
Code	Description
SB	EBONY, VINYL FRONT BUCKET SEATS, -inc: 6-way manual driver seat (fore/aft, up/down & lever recline) and 4-way manual passenger seat (fore/aft & lever recline) w/fold-flat back
AXLE RA	XTIO
Code	Description
***********	3.80 AXLE RATIO, (STD)
ADDITIO	NAL EQUIPMENT
Code	Description
53T	TRAILER TOW PACKAGE, -inc: trailer tow hitch w/trailer sway control (class 1, 2000 lbs capability, trailer module and 4-pin connector)
87R	KEY FOBS (2 ADDITIONAL)
525	CRUISE CONTROL, -inc: 4-Spoke Steering Wheel, satin chrome shells
76D	LED REAR CARGO AREA LIGHT, -inc: In place of the standard rear cargo area light
OPTION	PACKAGE
Code	Description
100A	ORDER CODE 100A

2019 Fleet/Non-Retail Ford Transit Connect Van XL LWB w/Rear Symmetrical Doors

WINDOW STICKER

2019 For	d Transit Connect Van XL LWB w/Rear Symmetrical Doors	
CODE	MODEL	MSRP
S7E	2019 Ford Transit Connect Van XL LWB w/Rear Symmetrical Doors	\$25,100.00
	OPTIONS	
992	ENGINE: 2.0L GDI I-4 GAS, -inc: auto start/stop system and EcoMode (STD)	\$0.00
almostral	TRANSMISSION: 8-SPEED SELECTSHIFT AUTOMATIC, (STD)	\$0.00
Z2	FROZEN WHITE	\$0.00
***********	STANDARD PAINT	\$0.00
SB	EBONY, VINYL FRONT BUCKET SEATS, -inc: 6-way manual driver seat (fore/aft, up/down & lever recline) and 4-way manual passenger seat (fore/aft & lever recline) w/fold-flat back	\$0.00
Suppression and the second	3.80 AXLE RATIO, (STD)	\$0.00
53T	TRAILER TOW PACKAGE, -inc: trailer tow hitch w/trailer sway control (class 1, 2000 lbs capability, trailer module and 4-pin connector)	\$395.00
87R	KEY FOBS (2 ADDITIONAL)	\$65.00
525	CRUISE CONTROL, -inc: 4-Spoke Steering Wheel, satin chrome shells	\$225.00
76D	LED REAR CARGO AREA LIGHT, -inc: In place of the standard rear cargo area light	\$70.00
100A	ORDER CODE 100A	\$0.00
***************************************	SUBTOTAL	\$25,855.00
	Advert/ Adjustments	\$0.00
	Manufacturer Destination Charge	\$1,195.00
	TOTAL PRICE	\$27,050.00
	MPG vay: MPG vay Cruising Range: 0.00 ml	

Any performance-related calculations are offered solely as guidelines. Actual unit performance will depend on your operating conditions.

Standard Equipment

MECHANICAL

Engine: 2.0L GDI I-4 Gas -inc: auto start/stop system and EcoMode	
Transmission: 8-Speed SelectShift Automatic	-tig-wite-u-va-p-u-tig-u-ti-p-u-tig-u-ti-p-u-tig-u-tig-u-tig-u-tig-u-tig-u-tig-u-tig-u-tig-u-tig-u-tig-u-tig-u
3.80 Axle Ratlo	
GVWR: TBD	
50-State Emissions System	
Transmission w/SelectShift Sequential Shift Control	
Front-Wheel Drive	
80-Amp/Hr 800CCA Maintenance-Free Battery w/Run Down Protection	
150 Amp Alternator	
Gas-Pressurized Shock Absorbers	
Front And Rear Anti-Roll Bars	The second s
Electric Power-Assist Steering	04, 100403 144003 144003 147040000000000000000000000000000000000
15.8 Gal. Fuel Tank	
Single Stainless Steel Exhaust	The state of the s
Strut Front Suspension w/Coll Springs	
Torsion Beam Rear Suspension w/Coil Springs	
4-Wheel Disc Brakes w/4-Wheel ABS, Front Vented Discs, Brake Assist and	Hill Hold Contro

EXTERIOR

Wheels: 16" Sparkle Sliver-Painted Steel -inc: full wheel covers (non-locking lug nut
Tires: 215/55R16 97H XL AS
Steel Spare Wheel
Full-Size Spare Tire Stored Underbody w/Crankdown
Clearcoat Paint
Black Front Bumper
Black Rear Bumper
Black Bodyside Moldings
Black Side Windows Trim and Black Front Windshield Trim
Black Door Handles
Black Manual Side Mirrors w/Convex Spotter and Manual Folding
Light Tinted Glass
Variable Intermittent Wipers
Fully Galvanized Steel Panels
Black Grille
Sliding Rear Doors
Split Swing-Out Rear Cargo Access
Tallgate/Rear Door Lock Included w/Power Door Locks
Aero-Composite Halogen Daytime Running Headlamps
Perimeter/Approach Lights

ENTERTAINMENT

Radio: AM/FM w/Bluetooth -inc: FordPass connect, 4.2" LCD multi-function display (MFD) screen, 1 USB port and 4 front speakers (2 front door speakers and 2 a-pillar tweeters)

Radio w/Seek-Scan, Clock, Speed Compensated Volume Control, Aux Audio Input Jack, Steering Wheel Controls, Radio Data System and External Memory Control

Streaming Audio

Integrated Roof Antenna

INTERIOR

Manual Tilt/Telescoping Steering Column

Gauges -inc: Speedometer, Odometer, Engine Coolant Temp, Tachometer, Trip Odometer and Trip Computer

FordPass Connect Mobile Hotspot Internet Access

Front Cupholder

Remote Keyless Entry w/Integrated Key Transmitter and Illuminated Entry

Manual Alr Conditioning

Glove Box

Driver Foot Rest

Front Cloth Headliner

Cloth Door Trim Insert

Urethane Gear Shift Knob

Vinyl Front Bucket Seats -inc: 6-way manual driver seat (fore/aft, up/down & lever recline) and 4-way manual passenger seat (fore/aft & lever recline) w/fold-flat back

Full Floor Console w/Storage, Full Overhead Console w/Storage and 2 12V DC Power Outlets

Delay Off Interior Lighting

Front Only Vinyl/Rubber Floor Covering

Vinyt/Rubber Floor Trim

Cargo Space Lights

FOB Controls -inc: Remote Engine Start

Driver And Passenger Door Bins

Power 1st Row Windows w/Driver 1-Touch Down

Delayed Accessory Power

Power Door Locks w/Autolock Feature

Systems Monitor

Redundant Digital Speedometer

Trip Computer

Outside Temp Gauge

Analog Display

Seats w/Vinyl Back Material

Manual Adjustable Front Head Restraints

Front Center Armrest w/Storage

Securilock Anti-Theft Ignition (pats) Engine Immobilizer

2 12V DC Power Outlets

SAFETY

Advancetrac w/Roll Stability Control Electronic Stability Control (ESC) And Roll Stability Control (RSC
ABS And Driveline Traction Control
Side Impact Beams
Dual Stage Driver And Passenger Seat-Mounted Side Airbags
Automatic Emergency Braking Forward Collision
Low Tire Pressure Warning
Dual Stage Driver And Passenger Front Airbags
Safety Canopy System Curtain 1st Row Airbags
Airbag Occupancy Sensor
Outboard Front Lap And Shoulder Safety Belts -inc: Height Adjusters and Pretensioners
Back-Up Camera



11564 E Washington Blvd Whittier CA 90606-

Phone (562) 695-7477 Fax (562) 699-0992

Quote: 290682

Quote Date: 7/9/2018

QUOTE TO: BOB WONDRIES FORD 400 S. ATLANTIC BLVD

ALHAMBRA, CA 91801-

Ph: 626-289-3591

SHIP TO: NATIONAL CITY

TONY GAUT 6198665336

1726 WILSON AVE

TOTAL:

\$1,556.24

NATIONAL CITY, CA 91950-

ACCT#:	P.O.#/CUST. ORDER #:	ORDER DATE:	TERMS:	DATE SHIPPED:	VIA:
201499		***************************************	Pay Upon Receipt		

FAX: 626-284-7052

Quanity:	Part Number:	Description:	Price:	Total:	
1	PARTC	COMPOSITE PARTITION W/WINDOW	\$769.08	\$769.08	
2	84427-A	RECTANGULAR LED DOME 530 LUMEN	\$24.58	\$49.16	
1	RKSBRED	ROUND TOGGLE SWITCH/ILLUMINATED	\$5.00	\$5.00	
1	PDI	PDI VEHICLE SEE LABOR	\$0.00	\$0.00	

COMMENTS:	VIN:	SUBTOTAL:		\$823.24
	****	TAX:	9.5000%	\$0.00
	PRICING ONLY GOOD FOR 36 DAYS FROM DATE OF QUOTE	LABOR:		\$358.00
	THE IS LIST ALL BUSINESS TO LET TAY FRALL THE STEWAR	FREIGH		\$375.00

Customer Approval:	and a substantial state assument degeneration. If no numbers order use accided the undereigned concepts to the use of the list pitht.			
Representative	Signature:	Date:	SX98037902 (Tax ID #)	
Represent	ative Name:	PO:	(100.1011)	
	Title:(Fuil)	VIN:	1935 pp. 1940 pp. 194	

FORM E

CONTRACT ACCEPTANCE AND AWARD



(Top portion of this form will be completed by NJPA if the vendor is awarded a contract. The vendor should complete the vendor authorized signatures as part of the RFP response.)

NJPA Contract #: 120716-NAF

NJPA Authorized Signatures:

Proposer's full legal name: 72 Hour LLC, aba National Auto Fleet Group

Based on NJPA's evaluation of your proposal, you have been awarded a contract. As an awarded vendor, you agree to provide the products and services contained in your proposal and to meet all of the terms and conditions set forth in this RFP, in any amendments to this RFP, and in any exceptions that are accepted by NJPA,

The effective date of the Contract will be January 17, 2017 and will expire on January 17, 2021 (no later than the later of four years from the expiration date of the currently awarded contract or four years from the date that the NJPA Chief Procurement Officer awards the Contract). This Contract may be extended for a fifth year at NJPA's discretion.

NJPA DIRECTOR OF COOPERATE CONTRACTS AND PROCUREMENT OF SIGNATURE	Jeremy Schwartz (NAME PRINTED OR TYPED)	
NJPA EXECUTIVE DIRECTOR/CEO SIGNATURE	Chad Coauette (NAME PRINTED OR TYPED)	
Awarded on January 16, 2017	NJPA Contract # 120716-NAF	
Vendor Authorized Signatures:		
Vendor Name 72 Hocs 2LC, A	•	
Authorized Signatory's Title # 1007	TESSE Coolet (NAME PRINTED OR TYPED)	
Executed on 1-16, 2017	NJPA Contract # 120716-NAF	

The following page(s) contain the backup material for Agenda Item: Resolution of the City Council of the City of National City authorizing to extend 25 feet of existing red curb "No Parking" on the west side of "L" Avenue, north of E. Plaza Boulevard (TSC No. 2018-12). (Engineering/Public Works)

CITY OF NATIONAL CITY, CALIFORNIA COUNCIL AGENDA STATEMENT

AGENDA ITEM NO. MEETING DATE: July 24, 2018 ITEM TITLE: Resolution of the City Council of the City of National City authorizing to extend 25 feet of existing red curb "No Parking" on the west side of "L" Avenue, north of E. Plaza Boulevard (TSC No. 2018-12). PREPARED BY: Luca Zappiello, Junior Engineer – Civil **DEPARTMENT:** Engineering/Public Works APPROVED BY: PHONE: 619-336-4360 At 17. Nangamill **EXPLANATION:** See attached. APPROVED: **Finance** FINANCIAL STATEMENT: ACCOUNT NO. APPROVED: MIS N/A **ENVIRONMENTAL REVIEW:** N/A FINAL ADOPTION: ORDINANCE: INTRODUCTION: STAFF RECOMMENDATION: Adopt a Resolution authorizing to extend 25 feet of existing red curb "No Parking" on the west side of "L" Avenue, north of E. Plaza Boulevard. BOARD / COMMISSION RECOMMENDATION: At their meeting on June 20, 2018, the Traffic Safety Committee approved staff's recommendation to extend 25 feet of existing red curb "No Parking" on the west side of "L" Avenue, north of E. Plaza Boulevard. ATTACHMENTS:

2. Staff Report to the Traffic Safety Committee on June 20, 2018 (TSC No. 2018-12)

1. Explanation w/ Exhibit

3. Resolution

EXPLANATION

Mr. Luis Natividad, Senior Community Advisor for Office of Council President Myrtle Cole, Fourth District of San Diego, has expressed concerns regarding the congestion of vehicles on "L" Avenue at the intersection with E Plaza Boulevard. Mr. Natividad stated that vehicles traveling southbound on "L" Avenue are unable to utilize the right turn lane at the intersection due to vehicles being parked on the west side of "L" Avenue. Mr. Natividad indicated that this condition creates congestion on "L" Avenue since vehicles turning right must wait until traffic has passed through the intersection. Mr. Natividad stated that the extension of the existing red curb "No Parking" on the west side of "L" Avenue would reduce congestion on "L" Avenue and provide better flow of traffic at the intersection.

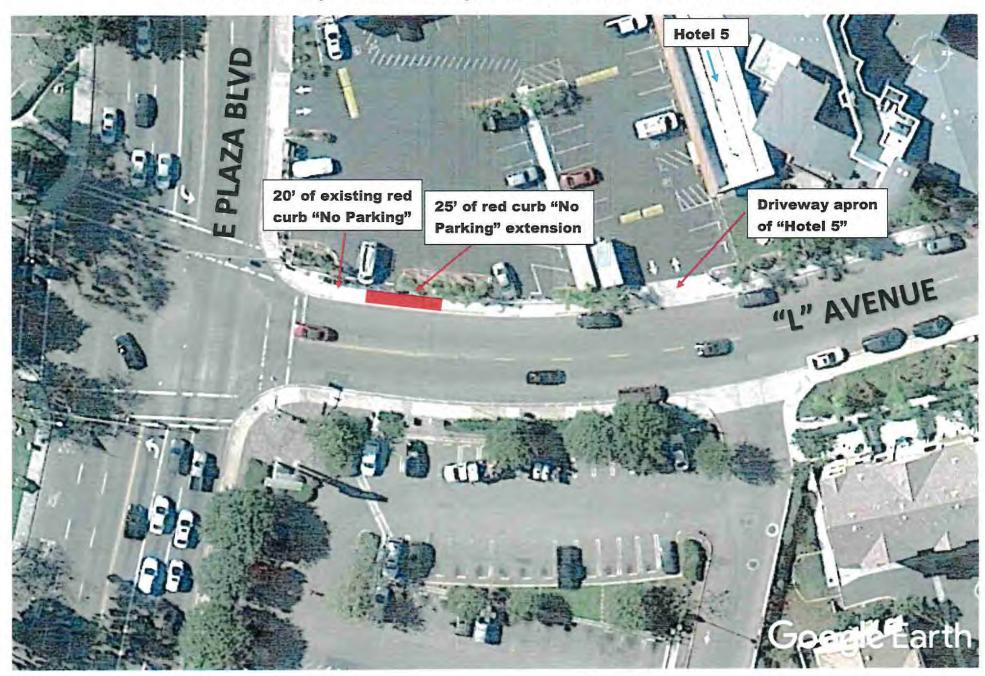
Staff performed a site evaluation. "L" Avenue is a 2-lane roadway with parallel parking on both sides of the street. The intersection between E Plaza Boulevard and "L" Avenue is controlled by a traffic light. Staff confirmed that there are 20 feet of existing red curb "No Parking" on the west side of "L" Avenue, north of E Plaza Boulevard. There are approximately 106 feet of unrestricted parking for five (5) standard-sized vehicles on the west side of "L" Avenue, north of E Plaza Boulevard between the end of the red curb "No Parking" at the intersection and the driveway apron of "Hotel 5". Staff recommends the extension of the existing 20 feet of red curb by 25 feet, for a total of 45 feet in order to reduce congestion at the intersection and provide better flow of traffic at the intersection.

Staff sent notices to area property owners, inviting them to attend the Traffic Safety Committee Meeting and/or contact staff with any questions.

This item was presented to the Traffic Safety Committee on June 20, 2018. Mr. Natividad was in attendance and spoke in support of the extension of the red curb "No Parking" on the west side of "L" Avenue, north of E. Plaza Boulevard. Staff presented the results of the site evaluation and after discussion, the Traffic Safety Committee voted to approve staff's recommendation to extend 25 feet of existing red curb "No Parking" on the west side of "L" Avenue, north of E. Plaza Boulevard

If approved by City Council, all work will be performed by City Public Works.

Location Map with Existing Conditions (TSC Item: 2018-12)



NATIONAL CITY TRAFFIC SAFETY COMMITTEE AGENDA REPORT FOR JUNE 20, 2018

ITEM NO. 2018-12

ITEM TITLE:

REQUEST TO EXTEND 25 FEET OF EXISTING RED CURB "NO

PARKING" ON THE WEST SIDE OF "L" AVENUE, NORTH OF E

PLAZA BOULEVARD

PREPARED BY:

Luca Zappiello, Junior Engineer - Civil Engineering & Public Works Department

DISCUSSION:

Mr. Luis Natividad, Senior Community Advisor for Office of Council President Myrtle Cole, Fourth District of San Diego, has expressed concerns regarding the congestion of vehicles on "L" Avenue at the intersection with E Plaza Boulevard. Mr. Natividad stated that vehicles traveling southbound on "L" Avenue are unable to utilize the right turn lane at the intersection due to vehicles being parked on the west side of "L" Avenue. Mr. Natividad indicated that this condition creates congestion on "L" Avenue since vehicles turning right must wait until traffic has passed through the intersection. Mr. Natividad stated that the extension of the existing red curb "No Parking" on the west side of "L" Avenue would reduce congestion on "L" Avenue and provide better flow of traffic at the intersection.

Staff performed a site evaluation. "L" Avenue is a 2-lane roadway with parallel parking on both sides of the street. The intersection between E Plaza Boulevard and "L" Avenue is controlled by a traffic light. Staff confirmed that there are 20 feet of existing red curb "No Parking" on the west side of "L" Avenue, north of E Plaza Boulevard. There are approximately 106 feet of unrestricted parking for five (5) standard-sized vehicles on the west side of "L" Avenue, north of E Plaza Boulevard between the end of the red curb "No Parking" at the intersection and the driveway apron of "Hotel 5". Staff recommends the extension of the existing 20 feet of red curb by 25 feet, for a total of 45 feet in order to reduce congestion at the intersection and provide better flow of traffic at the intersection.

Staff sent notices to area property owners, inviting them to attend the Traffic Safety Committee Meeting and/or contact staff with any questions.

STAFF RECOMMENDATION:

Based on an evaluation of existing conditions, staff recommends the extension of the existing 20 feet of red curb by 25 feet on the west side of "L" Avenue, north of E Plaza Boulevard in order to reduce congestion at the intersection. This will result in the loss of one (1) on-street parking space.

If approved by City Council, all work will be performed by City Public Works.

EXHIBITS:

- Public Request
- 2. Public Notice
- 3. Location Map

4. Photos

2017-12



PUBLIC REQUEST FORM

Address:	
Phone:	Email:
Location: West sic	le of "L" Avenue, north of E Plaza Blvd
Request: Request	to extend the existing red curb on the west side of
	orth of E Plaza Blvd in order to reduce congestion
on L Ave.	
-	
Attachments: Yes	No Description:
Attachments: Yes	No Description:
Attachments: Yes	No Description:
Request Received By: _	ZappielloApril 26, 2018
Request Received By: _ Received via:Count	ZappielloApril 26, 2018 er/In-PersonTelephoneEmailFaxReferral:
Request Received By: _	ZappielloApril 26, 2018 er/In-PersonTelephoneEmailFaxReferral:



June 13, 2018

Resident/Property Owner

Subject: TRAFFIC SAFETY COMMITTEE (TSC) ITEM NO. 2018-12

REQUEST TO EXTEND THE EXISTING RED CURB "NO PARKING" AT THE INTERSECTION ON THE WEST SIDE OF "L" AVENUE, NORTH OF E PLAZA BLVD (SEE ATTACHED LOCATION MAP)

Dear Sir/Madame:

The City of National City would like to invite you to our next public Traffic Safety Committee Meeting scheduled for **Wednesday**, **June 20**, **2018**, **at 1:00 P.M**. in the 2nd Floor Large Conference Room of the Civic Center Building, 1243 National City Boulevard, to discuss the above-referenced item.

The City Hall is ADA compliance. Please note that there are two disabled persons parking spaces in front of City Hall on the east side of National City that provide direct access on the 2nd Floor of City Hall via a pedestrian bridge.

If you have any questions, comments, and/or concerns, please contact the Engineering Department at 619-336-4380 and reference Traffic Safety Committee Item Number 2018-12.

Sincerely,

Stephen Manganiello

typhon 7. Maganiello

City Engineer

SM:lz

Enclosure: Location Map

2018-12

Location Map with Existing Conditions (TSC Item: 2018-12)





Location of proposed red curb "No Parking" on the west side of "L" Avenue (looking north)



Location of proposed red curb "No Parking" on the west side of "L" Avenue (looking west)

The following page(s) contain the backup material for Agenda Item: Resolution of the City Council of the City of National City authorizing to install Stop Control sign at various intersections within the neighborhood bounded by E. 1st Street to the north, E. 4th Street to the south, Highland Avenue to the east and "D" Av

CITY OF NATIONAL CITY, CALIFORNIA COUNCIL AGENDA STATEMENT

AGENDA ITEM NO. MEETING DATE: July 24, 2018 ITEM TITLE: Resolution of the City Council of the City of National City authorizing to install Stop Control sign at various intersections within the neighborhood bounded by E. 1st Street to the north, E. 4th Street to the south, Highland Avenue to the east and "D" Avenue to the west (TSC No. 2018-13). PREPARED BY: Luca Zappiello, Junior Engineer - Civil **DEPARTMENT:** Engineering/Public Works APPROVED BY: PHONE: 619-336-4360 **EXPLANATION:** H/ Wangamell See attached. FINANCIAL STATEMENT: APPROVED: **Finance** APPROVED: ACCOUNT NO. MIS N/A **ENVIRONMENTAL REVIEW:** N/A FINAL ADOPTION: ORDINANCE: INTRODUCTION: STAFF RECOMMENDATION: Adopt a Resolution authorizing to install Stop Control sign at various intersections within the neighborhood bounded by E. 1st Street to the north, E. 4th Street to the south, Highland Avenue to the east and "D" Avenue to the west. **BOARD / COMMISSION RECOMMENDATION:**

At their meeting on June 20, 2018, the Traffic Safety Committee approved staff's recommendation to install Stop Control sign at various intersections within the neighborhood bounded by E. 1st St to the north, E. 4th St to the south, Highland Ave to the east and "D" Ave to the west

ATTACHMENTS:

- 1. Explanation w/ Exhibit, ADT Counts and Traffic Collision History
- 2. Staff Report to the Traffic Safety Committee on June 20, 2018 (TSC No. 2018-13)
- Resolution

EXPLANATION

Several area residents contacted Engineering staff expressing safety concerns regarding the intersection at E. 2nd Street and "F" Avenue, citing one accident that occurred within the past few months. Area residents stated that many drivers ignore the Yield control signs installed on "F" Avenue (minor street) and they drive through the intersection without stopping and/or paying attention to the vehicles driving on E. 2nd Street (through street).

Staff performed a site evaluation. E. 2nd Street and "F" Avenue are two-lane local roadways with prima facie speed limits of 25 mph and unrestricted parallel parking on both sides of the streets. Staff confirmed that the intersection of E. 2nd Street and "F" Avenue is controlled by Yield control signs on "F" Avenue (minor street).

Engineering staff authorized Kimley-Horn & Associates to perform the 48-hour Average Daily Traffic (ADT) for E. 2nd Street and "F" Avenue at the intersection. The ADT counts determine if the two streets have similar operating characteristics to warrant the installation of All-Way Stop control based on the guidelines provided in the California Manual on Uniform Traffic Control Devices. The ADT counts were performed during the first week of June 2018 and are attached to this report.

Staff also reviewed the traffic collision history for this intersection, which confirmed that there were three "reported" traffic collisions within the past four years. The NCPD report shows that two crashes at the intersection were caused by failure to yield the right-of-way (CVC 21803A). See attachment traffic collision summary table.

This item was presented to the Traffic Safety Committee on June 20, 2018. Staff sent notices to area property owners and tenants, inviting them to attend the Traffic Safety Committee Meeting and/or contact staff with any questions. There were no members of the community present to speak on the item.

Staff presented the results of the ADT counts which indicate that at the intersection, the two streets have similar traffic volume and operating characteristics to warrant All-Way Stop control. Staff also presented the results of the traffic collision history provided by the National City Police Department (NCPD) Records Division which indicate that within the past four years, two collisions were caused by a failure to obey the Yield signs.

Based on these findings, staff recommends replacing the Yield Control sign with a Stop Control sign at all of the nearby "T" intersections of E. 1st Street and "F" Avenue, E. 2nd Street and "E" Avenue and E. 2nd Street and "G" Avenue since they operate as yield controlled for the minor streets.

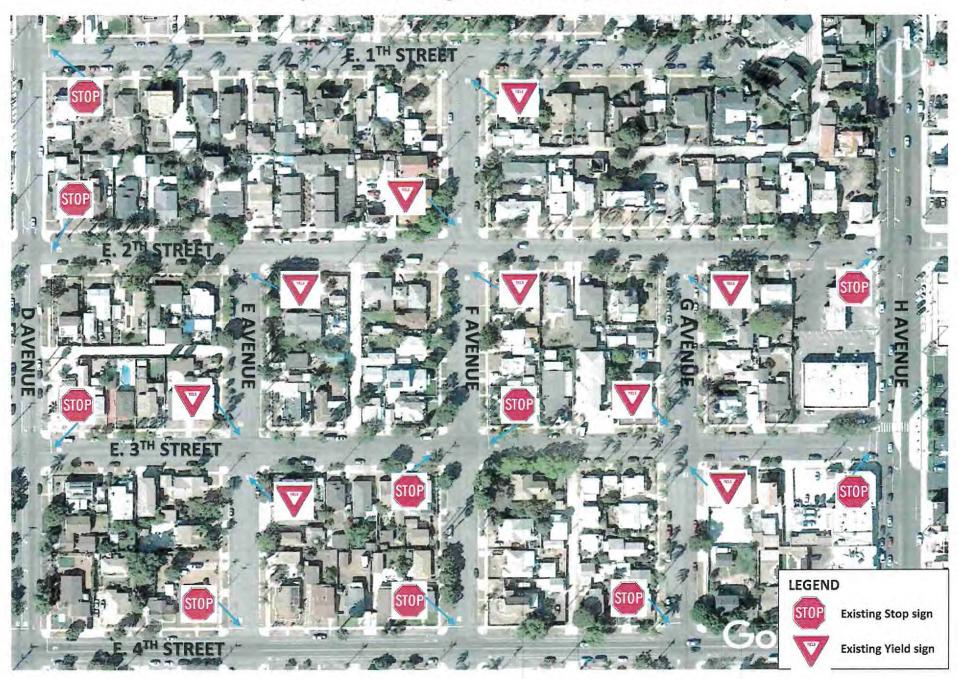
In addition, staff also recommends replacing the Yield Control sign with a Stop Control sign at the two intersections of E. 3rd Street and "E" Avenue and E. 3rd Street and "G" Avenue to provide consistency with other nearby intersections that have similar operating characteristics.

The Traffic Safety Committee approved staff's recommendations for the following traffic safety enhancements in the neighborhood bounded by E. 1st Street to the north, E. 4th Street to the south, Highland Avenue to the east and "D" Avenue to the west:

- 1. Install Stop control for the northbound "F" Avenue approaches (minor street) to the intersection with E. 1th Street (through street);
- 2. Install Stop control for the northbound "E" Avenue approaches (minor street) to the intersection with E. 2nd Street (through street);
- 3. Install Stop control for the southbound and northbound "F" Avenue approaches to the intersection with E. 2nd Street:
- 4. Install Stop control for the eastbound and westbound E. 2nd Street approaches to the intersection with E. 2nd Street;
- 5. Install Stop control for the northbound "G" Avenue approaches (minor street) to the intersection with E. 2nd Street (through street);
- 6. Install Stop control for the southbound and northbound "E" Avenue approaches (minor street) to the intersection with E. 3rd Street (through street);
- 7. Install Stop control for the southbound and northbound "G" Avenue approaches (minor street) to the intersection with E. 3rd Street (through street);

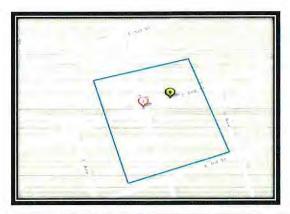
If approved by City Council, all work will be performed by City Public Works.

Location Map with Existing Conditions (TSC Item: 2018-13)



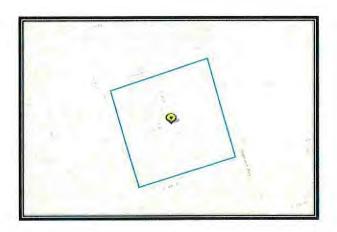
Traffic Collision History (NCPD Records Division)

From June 1, 2014 – June 1, 2018, there were 3 traffic collisions at the intersection of E. 2nd Street & "F" Avenue.



AGENCY	ACTIVITY NUMBER	DATE - ACTIVITY	VIOLATION CODE	VIOLATION DESCRIPTION	ADDRESS	BEAT	INJURY FLAG	NUMBER INJURED		RUN FLAG	HIT & RUN LEVEL	PEDESTRIAN RELATED	CHARGE LEVEL
NATIONAL CITY	1605505	10/3/2016 9:32	VC 21800(D)(1)	APPROACHING INTERSECTION WITH INOPERATIVE SIGNALS.	E02ND STREET & F AVENUE, NC,	NATIONAL CITY-020	N	0	0	N		N	INFRACTION
NATIONAL CITY	1703962	7/26/2017 6:39	VC 21803A	RIGHT-OF-WAY:FROM YIELD INTERSECTION (I)	E02ND STREET & F AVENUE, NC, 91950	NATIONAL CITY - 020	Y	1	0	N		N	INFRACTION
NATIONAL CITY	1802294	5/7/2018 20:20	VC 21803A	RIGHT-OF-WAY:FROM YIELD INTERSECTION (I)	E01ND STREET & F AVENUE, NC, 91950	NATIONAL CITY-020	Y	2	0	N		N	INFRACTION

From June 1, 2014 – June 1, 2018, there were 1 traffic collisions at the intersection of E. 3rd Street & "G" Avenue.



						FLAG	INJURED	KILLED	FLAG	LEVEL	RELATED	LEVEL
NATIONAL CITY 1600942	2/17/2016 16:57	VC 21803A	YIELD SIGNS, YIELD UNTIL REASONABLY SAFE	E03RD STREET & G AVENUE, NC,	NATIONAL CITY-020	Y	2	0	N		N	INFRACTION

Volumes for: Monday, June 04, 2018 City: National City Project# 18-1267-001

Location: E. 2nd St. east of F Ave.

DAY 1

AM Period	NB	SB	EB		WB			PM Period	NB	SB	EB		WB		
00:00			0		0			12:00			2		3		
00:15			1		0			12;15			4		4		
00:30			2		0			12:30			3		3		
00:45			1	4	0	0	4	12:45			2	11	2	12	23
01:00			0		1			13:00			4		5		
01:15			0		1			13:15			2		2		
01:30			0		0			13:30			1		3		
01:45			0	0	0	2	2	13:45			4	11	6	16	27
02:00			0		0			14:00			3		3		
02:15			1		0			14:15			2		2		
02:30			0		0			14:30			1		5		
02:45			1	2	0	0	2	14:45			2	8	2	12	20
03:00			1		1			15:00			4		3		
03:15			1		0			15:15			3		7		
03:30			0		1			15:30			2		4		
03:45			0	2	0	2	4	15:45			5	14	3	17	31
04:00			0		0			16:00			2		6		
04:15			0		0			16:15			3		4		
04:30			0		1			16:30			1		6		
04:45			0	0	2	3	3	16:45			1	7	7	23	30
05:00			2		0			17:00			2		8		
05:15			0		0			17:15			2		5		
05:30			0		0			17:30			3		9		
05:45			0	2	0	0	2	17:45			2	9	6	28	37
06:00			1		1			18:00			5		10		
06:15			3		0			18:15			2		7		
06:30			2		0			18:30			3		4		
06:45			1	7	0	1	8	18:45			4	14	3	24	38
07:00			2		1			19:00			3		6		
07:15			3		3			19:15			2		3		
07:30			2		2			19:30			5		5		
07:45			5	12	1	7	19	19:45			2	12	8	22	34
08:00			2		1			20:00			3		1		
08:15			3		0			20:15			2		1		
08:30			6		1			20:30			1		0		
08:45			3	14	1	3	17	20:45			0	6	1	3	9
09:00			7		0			21:00			0		0		
09:15			4		1			21:15			1		0		
09:30			3		0			21:30			3		0		
09:45			6	20	0	1	21	21:45			2	6	0	0	6
10:00			3		1			22:00			0		1		
10:15			5		2			22:15			0		0		
10:30			2		1			22:30			1		0		
10:45			3	13	1	5	18	22:45			1 0	1	0	1	2
11:00			4		2			23:00			1		0		
11:15			3		1			23:15			2		0		
11:30			2		3			23:30			1		0		
11:45			5	14	2	8	22	23:45			0	4	1	1	5
Total Vol.				90		32	122					103		159	262

Daily Totals EB **GPS Coordinates:** 32.682882, -117.102385 NB SB WB Combined 193 191 384 MA PM 26.2% 31.8% Split % 73.8% 39.3% 60.7% 68.2% Peak Hour 08:30 11:30 11:45 15:00 17:30 17:30 14 0.70 Volume 20 12 26 0.81 0.73 P.H.F. 0.71 0.75 0.80

Volumes for: Tuesday, June 05, 2018 City: National City Project# 18-1267-001

Location: E. 2nd St. east of F Ave.

DAY 2

AM Period 1	NB SB	EB		WB			PM Period	NB	SI	3	EB		WB		
00:00		0		1			12:00				2		4		
00:15		0		1			12:15				1		3		
00:30		0		0			12:30				2		2		
00:45		0	0	0	2	2	12:45				4	9	1	10	19
01:00		1		0			13:00				3		2		
01:15		0		0			13:15				5		2		
01:30		0		0			13:30				2		1		
01:45		0	1	0	0	1	13:45				3	13	2	7	20
02:00		0		0			14:00				4		4		
02:15		1		0			14:15				3		3		
02:30		0		0			14:30				2		2		
02:45		0	1	1	1	2	14:45				2	11	5	14	25
03:00		0		0			15:00				5		2		
03:15		0		0			15:15				2		3		
03:30		1		0			15:30				3		6		
		0	1	1	1	2	15:45				4	14	3	14	28
03:45			1		1	-						1.4		17	20
04:00		0		0			16:00				3		7		
04:15		1		1			16:15				2		4		
04:30		0	3	2		-6-	16:30				1		3	49	25
04:45		0	1	1	4	5	16:45				2	8	3	17	25
05:00		0		0			17:00				3		6		
05:15		2		1			17:15				2		3		
05:30		1		3			17:30				5		5		
05:45		3	6	0	4	10	17:45				2	12	4	18	30
06:00		2		0			18:00				3		6		
06:15		1		0			18:15				2		3		
06:30		2		1			18:30				1		7		
06:45		3	8	0	1	9	18:45				2	8	4	20	28
07:00		2		1			19:00				3		3		
07:15		5		2			19:15				2		6		
07:30		2		1			19:30				0		3		
07:45		3	12	0	4	16	19:45				0	5	2	14	19
08:00		2		1			20:00				1		5		
08:15		5		3			20:15				1		5		
08:30		2		2			20:30				0		3		
08:45		4	13	0	6	19	20:45				0	2	2	15	17
		7	10	1							1			- 10	
09:00							21:00						1 0		
09:15		4		2			21:15				0				
09:30			20	1	0	20	21:30						1	7	3
09:45		6	20	4	8	28	21:45				0	1	0	2	3
10:00		3		1			22:00				1		0		
10:15		5		2			22:15				0		0		
10:30		2	45	4		25	22:30				0	4	0		
10:45		5	15	3	10	25	22:45				0	1	0	0	1
11:00		5		2			23:00				0		1		
11:15		3		2			23:15				1		0		
11:30		6		3			23:30				0		0		
11:45		7	21	2	9	30	23:45				0	1	0	1	2
Total Vol.			99		50	149						85		132	217
PS Coordinates:	32.682882, -117.102385		33		50	145			NB	SB	t	Daily Tot EB	tals	WB	Combined
									THE .	50		184		182	366
			M		12571.01							PM		46.551	#0
Split %			66.4%	Lie-		40.7%	1	-				39.2%	Ú.	60.8%	59.3%
			11:00		11:30	11:00						12:30		15:30	15:30
Peak Hour															
Peak Hour Volume P.H.F.			21 0.75		12 0.75	30 0.83						14 0.70		20 0.71	32 0.80

Volumes for:

&

City: National City

Project# 18-1267-001

Monday, June 04, 2018 Tuesday, June 05, 2018 Location: E. 2nd St. east of F Ave.

2-DAY AVERAGE

AM Period	NB		SB		EB		WB			PM Period	NB		SB		EB		WB		
00:00	0		0		0		1			12:00	0		0		2		4		
00:15	0		0		1		1			12:15	0		0		3		4		
00:30	0		0		1		0			12:30	0		0		3		3		
00:45	0	0	0	0	1	2	0	1	3	12:45	0	0	0	0	3	10	2	11	21
01:00	0		0		1		1			13:00	0		0		4		4		
01:15	0		0		0		1			13:15	0		0		4		2		
01:30	0		0		0		0			13:30	0		0		2		2		
01:45	0	0	0	0	0	1	0	1	2	13:45	0	0	0	0	4	12	4	12	24
		U				_		-						-		2.60			
02:00	0		0		0		0			14:00	0		0		4		4		
02:15	0		0		1		0			14:15	0		0		3		3		
02:30	0		0		0	-	0		2	14:30	0		0	0	2	10	4	44	22
02:45	0	0	0	0	1	2	1	1	2	14:45	0	0	0	0		10	4	13	23
03:00	0		0		1		1			15:00	0		0		5		3		
03:15	0		0		1		0			15:15	0		0		3		5		
03:30	0		0		1		1			15:30	0		0		3		5		
03:45	0	0	0	0	0	2	1	2	3	15:45	0	0	0	0	5	14	3	16	30
04:00	0		0		0		0			16:00	0		0		3		7		
04:15	0		0		1		1			16:15	0		0		3		4		
04:30	0		0		0		2			16:30	0		0		1		5		
04:45	0	0	0	0	0	1	2	4	4	16:45	0	0	0	0	2	8	5	20	28
05:00	0		0		1		0			17:00	0		0		3		7		
05:15	0		0		1		1			17:15	0		0		2		4		
05:30	0		0		1		2			17:30	0		0		4		7		
05:45	0	0	0	0	2	4	0	2	6	17:45	0	0	0	0	2	11	5	23	34
		-										-							
06:00	0		0		2		1			18:00	0		0		4		8		
06:15	0		0		2		0			18:15	0		0		2		5		
06:30	0		0	6	2	•	1		0	18:30	0	0	0		2	3.4	6	22	22
06:45	0	0	0	0		8	0	1	9	18:45	0	0		0		11	4	22	33
07:00	0		0		2		1			19:00	0		0		3		5		
07:15	0		0		4		3			19:15	0		0		2		5		
07:30	0		0		2		2			19:30	0	Har	0		3	T.	4	- 65	
07:45	0	0	0	0	4	12	1	6	18	19:45	0	0	0	0	1	9	5	18	27
08:00	0		0		2		1			20:00	0		0		2		3		
08:15	0		0		4		2			20:15	0		0		2		3		
08:30	0		0		4		2			20:30	0		0		1		2		
08:45	0	0	0	0	4	14	1	5	18	20:45	0	0	0	0	0	4	2	9	13
09:00	0		0		7		1			21:00	0		0		1		1		
09:15	0		0		4		2			21:15	0		0		1		0		
09:30	0		0		3		1			21:30	0		0		2		1		
09:45	0	0	0	0	6	20	2	5	25	21:45	0	0	0	0	1	4	0	1	5
	0		0		3.		1			22:00	0		0		1		1		
10:00 10:15	0		0		5		2			22:15	0		0		0		0		
	0		0		2		3			22:15	0		0		1		0		
10:30		0	0	0	4	14	2	8	22	22:45	0	0	0	0	0	1	0	1	.2
10:45	0	0		U		14		O	44			u		U		1			
11:00	0		0		5		2			23:00	0		0		1		1		
11:15	0		0		3		2			23:15	0		0		2		0		
11:30	0		0	2.	4		3			23:30	0	144	0		1		0	4	
11:45	0	0	0	0	6	18	2	9	26	23:45	0	0	0	0	0	3	1	1	4
Total Vol.						95		41	136							94		146	240
PS Coordinate	s:	9	2,682882,	-117,1023	385							NB		SB	D	aily Tot	als		Combine
											17					189		187	375
					A	M										PM			
Split %						69.7%		30.3%	36.1%							39.2%		60.8%	63.9%
Peak Hour						09:00		11:30	11:30							15:00		17:30	17:30
						20		12	27							14		25	37
Volume						20		12	21							7.1		23	3/

Volumes for: Monday, June 04, 2018

City: National City

Project# 18-1267-002

Location: F Ave. south of E. 2nd St.

DAY 1

AM Period	NB		SB		EB	WB		PM Period	NB		SB		EB WE		
00:00	2		0					12:00	1		3				
00:15	0		0					12:15	2		3				
00:30	0		0					12:30	5		2				
00:45	1	3	0	0			3	12:45	2	10	1	9			19
01:00	1		1					13:00	3		3				
01:15	0		0					13:15	2		3				
01:30	0		0					13:30	1		3				
01:45	0	1	0	1			2	13:45	1	7	2	11			18
02:00	0		0					14:00	2		3				
02:15	0		0					14:15	1		1				
02:30	0		0					14:30	2		2				
02:45	0	0	0	0				14:45	2	7	3	9			16
03:00	0		0					15:00	2		5				
03:15	0		0					15:15	4		3				
03:30	0		0					15:30	3		2				
03:45	1	i	0	0			1	15:45	1	10	1	11			21
04:00	0		0					16:00	3		1				
	0		0					16:15	4		3				
04:15			0					16:30	6		2				
04:30	1	2	1	1			3	16:45	3	16	3	9			25
04:45				-			3			10	_	9			23
05:00	1		0					17:00	5		3				
05:15	1		0					17:15	5		2				
05:30	1		0				-	17:30	5	94	2	40			27
05:45	1	4	0	0			4	17:45	2	17	3	10			27
06:00	1		1					18:00	4		1				
06:15	1		0					18:15	1		2				
06:30	1		0					18:30	0		2				
06:45	2	5	0	1			6	18:45	1	6	1	6			12
07:00	2		1					19:00	3		2				
07:15	0		3					19:15	2		3				
07:30	5		1					19:30	1		5				
07:45	2	9	1	6			15	19:45	0	6	3	13			19
08:00	7		4					20:00	1		3				
08:15	3		3					20:15	2		1				
08:30	5		5					20:30	1		2				
08:45	4	19	3	15			34	20:45	0	4	4	10			14
09:00	1		1					21:00	0		1				
09:15	0		1					21:15	0		0				
09:30	1		1					21:30	0		0				
09:45	1	3	1	4			7	21:45	1	1	1	2			3
10:00	2		3					22:00	1		1				
10:15	1		1					22:15	2		0				
10:30	1		2					22:30	1		1				
10:45	3	7	1	7			14	22:45	0	4	0	2			6
11:00	1		5				-	23:00	0		0				
11:00	2		2					23:15	1		1				
11:15	0		2					23:30	0		1				
11:45	4	7	2	11			18	23:45	1	2	0	2			4
Total Vol.		61		46			107			90	-	94			184
GPS Coordinates	s:		682380	-117.10264	9		207			50			Daily Totals		201
										NB		SB	EB	WB	Combined
										151		140	272		291
Split %		57.0%		43.0%	AM		36.8%	-		48.9%	1	51.1%	PM		63.2%
Peak Hour		08:00		08:00			08:00			16:30		19:15			16:15
Volume P.H.F.		19 0.68		15 0.75			34 0.77			19 0.79		14 0.70			29 0.91
Patter		0.08		0.75			0.77			0.75		0.70			0.91

Volumes for: Tuesday, June 05, 2018 City: National City Project# 18-1267-002

Location: F Ave. south of E. 2nd St.

DAY 2

AM Period	NB		SB	E	В	WB	PM Period	NB		SB		EB WB		
00:00	0		0				12:00	2		2				
00:15	1		0				12:15	3		3				
00:30	1		0				12:30	0		4				
00:45	0	2	0	0		2	12:45	0	5	1 1	0			15
01:00	2		0				13:00	2		1				
01:15	0		0				13:15	2		2				
01:30	0		0				13:30	2		1				
01:45	0	2	0	0		2	13:45	1	7		5			13
02:00	0		0				14:00	4		1				
02:15	0		0				14:15	3		3				
02:30	0		0				14:30	2		4				
02:45	1	1	0	0		1	14:45	4	13	4 1	2			25
03:00	0		0				15:00	9		3				
03:15	0		0				15:15	5		6				
03:30	0		0				15:30	4		4				
03:45	0	0	0	0			15:45	1	19	5 1	8			37
04:00	0		1				16:00	2		2				
04:00	0		0				16:15	5		2				
04:15	0		0				16:30	2		5				
04:30	2	2	0	1		3	16:45	4	13		2			25
				•					13		-			23
05:00	1		0				17:00	0		4				
05:15	0		0				17:15	5		2 5				
05:30	1	2	0				17:30	2	8		2			20
05:45	1	3		1		4	17:45		8					20
06:00	0		1				18:00	5		4				
06:15	1		1				18:15	3		1				
06:30	3	-	1				18:30	1		4				40
06:45	1	5	1	4		9	18:45	0	9		0			19
07:00	7		1				19:00	1		2				
07:15	4		2				19:15	2		1				
07:30	0		2	4		1	19:30	0	45	1				2.2
07:45	4	15	1	6		21	19:45	_ 1	4		5			9
08:00	2		3				20:00	0		3				
08:15	1		4				20:15	1		5				
08:30	3		2				20:30	2		2				
08:45	5	11	2	11		22	20:45	1	4	1 1	1			15
09:00	2		2				21:00	0		1				
09:15	2		1				21:15	1		3				
09:30	0		1				21:30	0		3				
09:45	2	6	1	5		11	21:45	2	3	1 1	8			11
10:00	2		5				22:00	2		1				
10:15	6		1				22:15	1		1				
10:30	0		2				22:30	2		1				
10:45	2	10	2	10		20	22:45	1	6		4			10
11:00	0		2				23:00	0		0				
11:15	1		2				23:15	1		1				
11:30	2		1				23:30	0		0				
11:45	3	6	1	6		12	23:45	1	2		2			4
Total Vol.		63		44		107			93	1	10			203
GPS Coordinate	s:		682380,	-117,102649					NB		SB	Daily Totals EB	WB	Combined
									156		54	LD	AAD	310
					AM							PM		
Split %		58.9%		41.1%		34.59			45.8%		.2%			65.5%
Peak Hour		06:30		08:00		08:00	ki.		14:45		5:00			14:45
		15		11		22			22	10	18			39
Volume P.H.F.		0.54		0.69		0.79			0.61		.75			0.81

Prepared by: Field Data Services of Arizona/Veracity Traffic Group (520) 316-6745

Volumes for:

City: National City

Project# 18-1267-002

Monday, June 04, 2018 Tuesday, June 05, 2018 Location : F Ave. south of E. 2nd St.

2-DAY AVERAGE

AM Period	NB		SB		EB		WB			PM Period	NB		SB		EB		WB		
00:00	1		0		0		0			12:00	2		3		0		.0		
00:15	1		0		0		0			12:15	3		3		0		0		
00:30	1		0		0		0			12:30	3		3		0		0		
00:45	1	3	0	0	0	0	0	0	3	12:45	1	8	1	10	0	0	0	0	17
	2		1		0		0			13:00	3	-	2		0		0	-	
01:00																			
01:15	0		0		0		0			13:15	2		3		0		0		
01:30	0		0		0	_	0		_	13:30	2	-	2		0		0		
01:45	0	2	0	1	0	0	0	0	2	13:45	1	7	2	9	0	0	0	0	16
02:00	0		0		0		0			14:00	3		2		0		0		
02:15	0		0		0		0			14:15	2		2		0		0		
02:30	0		0		0		0			14:30	2		3		0		0		
02:45	1	1	0	0	0	0	0	0	1	14:45	3	10	4	11	0	0	0	0	21
03:00	0		0		0		0			15:00	6		4		0		0		
03:15	0		0		0		0			15:15	5		5		0		0		
03:30	0		0		0		0			15:30	4		3		0		0		
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04:30	1		0		0		0			16:30	4		4		0		0		
04:45	2	2	1	1	0	0	0	0	3	16:45	4	15	3	11	0	0	0	0	25
05:00	1		0		0		0			17:00	3		4		0		0		
05:15	1		0		0		0			17:15	5		2		0		0		
05:30	1		0		0		0			17:30	4		4		0		0		
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07:30	3		2		0		0			19:30	1		3		0		0		
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08:30	4		4		0		0			20:30	2		2		0	25	0		
08:45	5	15	3	13	0	0	0	0	28	20:45	1	4	3	11	0	0	0	0	15
09:00	2		2		0		0			21:00	0		1		0		0		
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10:30	1		2		0		0			22:30	2		-	-	0	-			1.2
10:45	3	9	2	9	0	0	0	0	17	22:45	1	5	1	3	0	0	0	0	8
11:00	1		4		0		0			23:00	0		0		0		0		
11:15	2		2		0		0			23:15	1		1		0		0		
11:30	1		2		0		0			23:30	0		1		0		0		
11:45	4	7	2	9	0	0	0	0	15	23:45	1	2	1	2	0	0	0	0	4
Total Vol.		62		45					107			92		102					194
SPS Coordinate	es:		2.682380,	-117.1026	49										Di	aily To	tals		
												NB 154		SB 147	_				Combine
					Δ	М						154		147		PM			301
Split %		57.9%		42.1%					35.6%	o		47.3%		52.7%		100/13			64.4%
Peak Hour		08:00		08:00					08:00			14:45		14:30					14:45
Volume		15		13					28			17		15					32
P.H.F.		0.83		0.93					0.88			0.75		0.83					0.83

NATIONAL CITY TRAFFIC SAFETY COMMITTEE AGENDA REPORT FOR JUNE 20, 2018

ITEM NO. 2017-13

ITEM TITLE:

REQUEST TO INSTALL STOP CONTROL SIGN AT VARIOUS INTERSECTIONS WITHIN THE NEIGHBORHOOD BOUNDED BY E. 1ST STREET TO THE NORTH, E. 4TH STREET TO THE SOUTH, HIGHLAND AVENUE TO THE EAST AND "D" AVENUE

TO THE WEST

PREPARED BY:

Luca Zappiello, Junior Engineer - Civil Engineering & Public Works Department

DISCUSSION:

Several residents contacted Engineering staff expressing safety concerns regarding the intersection at E. 2nd Street and "F" Avenue, citing one accident that occurred within the past few months. Area residents stated that many drivers ignore the Yield control signs installed on "F" Avenue (minor street) and they drive through the intersection without stopping and/or paying attention to the vehicles driving on E. 2nd Street (through street).

Staff performed a site evaluation. E. 2nd Street and "F" Avenue are 2-lane local roadways with prima facie speed limits of 25 mph and unrestricted parallel parking on both sides of the streets. Staff confirmed that the intersection of E. 2nd Street and "F" Avenue is controlled by Yield control signs on "F" Avenue (minor street).

Engineering staff authorized Kimley-Horn & Associates to perform the 48-hour Average Daily Traffic (ADT) for E 2nd Street and "F" Avenue at the intersection. The ADT counts determine if the two streets have similar operating characteristics to warrant the installation of All-Way Stop control based on the guidelines provided in the California Manual on Uniform Traffic Control Devices. The ADT counts were performed during the first week of June and are attached to this report.

Staff also reviewed the traffic collision history for this intersection, which confirmed there were three "reported" traffic collisions within the past four years. The NCPD report shows that two crashes at the intersection were caused by failure to yield the right-of-way (CVC 21803A). See attachment traffic collision summary table.

The results of the ADT data provided by Kimley-Horn & Associates indicate that the intersection warrants for All-Way Stop control since the two-day average (June 4th 2018 and June 5th 2018) of the daily traffic counts of the two streets was found to be 375 for E. 2nd Street east of "F" Avenue and 301 for "F" Avenue south of E. 2nd Street. This result is supported by the CA-MUTCD, which states that an "intersection of two residential neighborhood collector (through) streets of similar design and operating characteristics where multi-way stop control would improve traffic operational characteristics of the intersection."

Furthermore, staff observed that the nearby intersections of E. 1st Street and "F" Avenue, E. 2nd Street and "E" Avenue and E. 2nd Street and "G" Avenue are "T" intersections and they operate as yield controlled for the minor street. Staff recommends replacing the Yield Control sign with a Stop Control sign at all of the three intersections since vehicles travelling on the minor streets must make a complete stop before attempting to enter onto the major streets that have the right of way.

Staff also noted that the two intersections of E. 3rd Street and "E" Avenue and E. 3rd Street and "G" Avenue are also controlled by Yield signs for the minor streets. At these intersections, staff recommends replacing the Yield Control sign with a Stop Control sign to provide consistency with other nearby intersections that have similar operating characteristics. California Vehicle Code and National City Municipal Code require a minimum of 25 feet of red curb "No Parking" for each approach to a Stop sign.

STAFF RECOMMENDATION:

Staff recommends the following traffic safety enhancements for the neighborhood bounded by E. 1st Street to the north, E. 4th Street to the south, Highland Avenue to the east and "D" Avenue to the west:

- 1. Install Stop control for the northbound "F" Avenue approaches (minor street) to the intersection with E. 1th Street (through street);
- 2. Install Stop control for the northbound "E" Avenue approaches (minor street) to the intersection with E. 2nd Street (through street);
- 3. Install Stop control for the southbound and northbound "F" Avenue approaches to the intersection with E. 2nd Street;
- Install Stop control for the eastbound and westbound E 2nd Street approaches to the intersection with E. 2nd Street;
- 5. Install Stop control for the northbound "G" Avenue approaches (minor street) to the intersection with E. 2nd Street (through street);
- 6. Install Stop control for the southbound and northbound "E" Avenue approaches (minor street) to the intersection with E. 3rd Street (through street);
- 7. Install Stop control for the southbound and northbound "G" Avenue approaches (minor street) to the intersection with E. 3rd Street (through street);

ATTACHMENTS:

- 1. Correspondence;
- 2. Public Notice;
- 3. Location Map with Existing Conditions;
- 4. Location Map with Recommended Enhancements;
- 5. Photos:
- 6. ADT counts:
- 7. Traffic Collision History.

Good day Mr. Rodriguez,

I am reaching out to you as a concerned neighbor for the safety of my community.

Last night at approximately 8:30 pm there was once again an accident on F Ave and E. 2nd.

This intersection is prone to accidents at least once every three months or so. In my humble opinion we need to survey and make it less dangerous for all of us! I have witnessed vehicles traveling on E. 2^{nd} after turning from Highland at a high speed of rate.

I live at 221 F Ave- one of the vehicles involved ended up in front of my home. Scary uh?

I came out as many of the neighbors did- to render help. You should have seen the little girl that was in one of the vehicles- shaking like a leaf (waiting for the ambulance).

As a matter of public record -I/we would like to know exactly how many accidents there are a year on that intersection- If I may please.

As a member of the community and on behave of many of my neighbors we'd like to petition a very much need STOP sign.

I understand there is a protocol in place- If you would be kind to guide me through the process or give me the name of the person which I could contact to expedite the process I would very much appreciate it.

Thank you for your time and cooperation.

Laura E. Guzman



June 13, 2018

Resident/Property Owner

Subject: TRAFFIC SAFETY COMMITTEE (TSC) ITEM NO. 2018-13

REQUEST TO INSTALL STOP CONTROL SIGN AT VARIOUS INTERSECTIONS WITHIN THE NEIGHBORHOOD BOUNDED BY E. 1ST STREET TO THE NORTH, E. 4TH STREET TO THE SOUTH, HIGHLAND AVENUE TO THE EAST AND "D" AVENUE TO THE WEST

Dear Sir/Madame:

The City of National City would like to invite you to our next public Traffic Safety Committee Meeting scheduled for **Wednesday**, **June 20**, **2018**, **at 1:00 P.M**. in the 2nd Floor Large Conference Room of the Civic Center Building, 1243 National City Boulevard, to discuss the above-referenced item.

The City Hall is ADA compliance. Please note that there are two disabled persons parking spaces in front of City Hall on the east side of National City that provide direct access on the 2nd Floor of City Hall via a pedestrian bridge.

If you have any questions, comments, and/or concerns, please contact the Engineering Department at 619-336-4380 and reference Traffic Safety Committee Item Number 2018-13.

Sincerely,

Stephen Manganiello

City Engineer

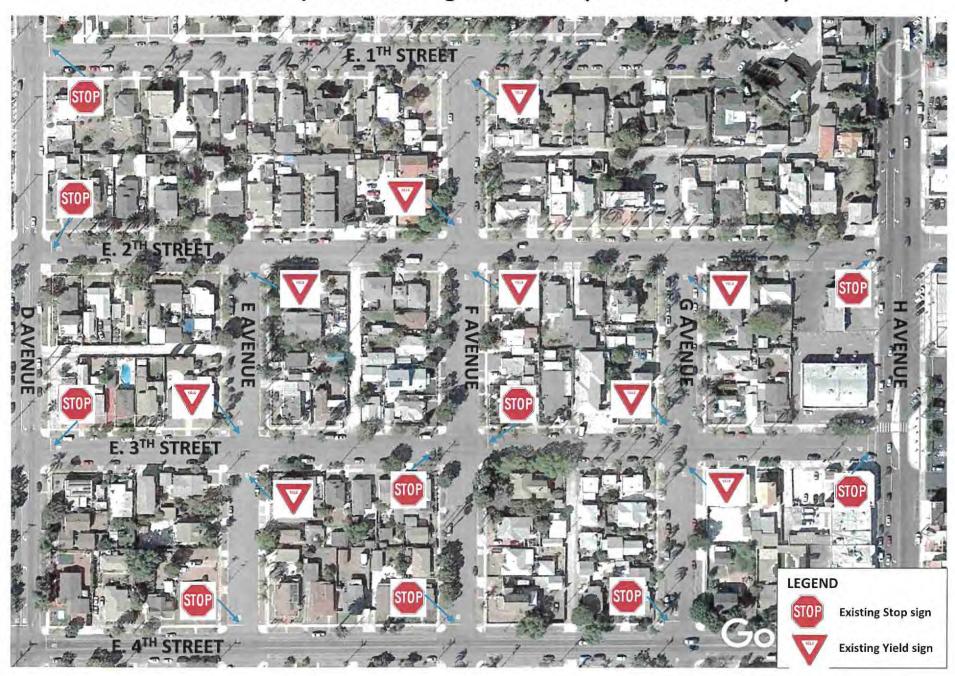
SM:lz

Enclosure: Location Map with Existing Conditions

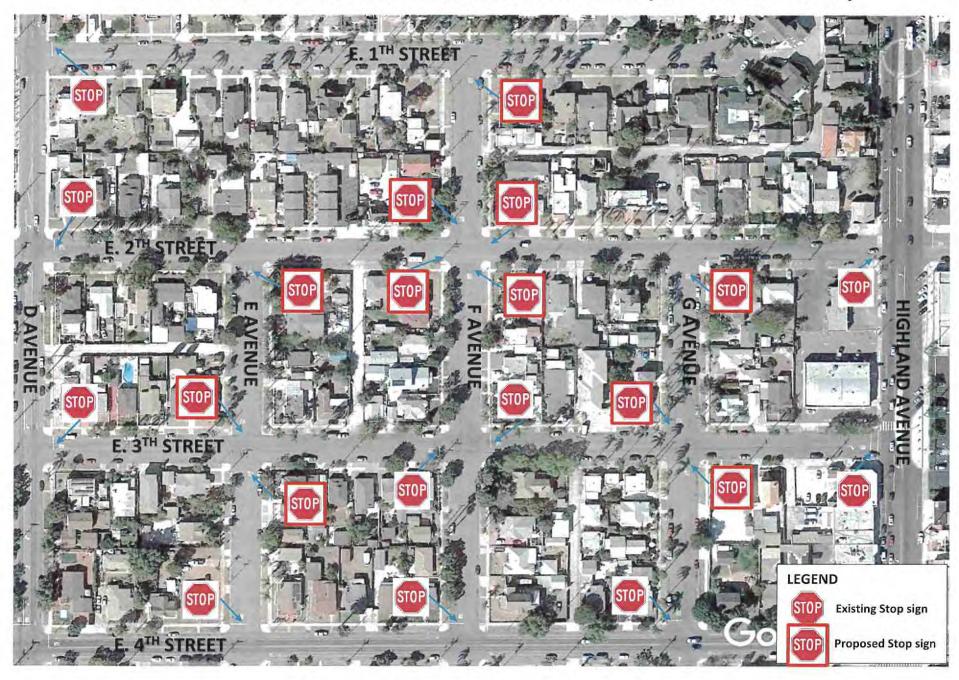
2. Maganiello

Location Map with Recommended Enhancements

Location Map with Existing Conditions (TSC Item: 2018-13)



Location Map with Recommended Enhancements (TSC Item: 2018-13)





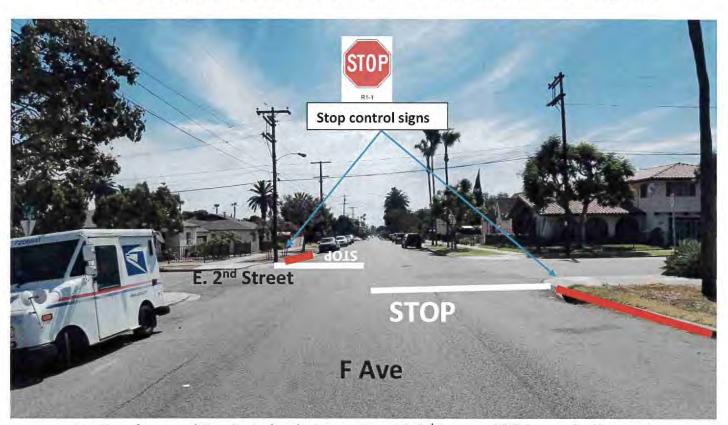
Location of proposed Stop Control at the "T" intersection at E. 1st Street and "F" Avenue (looking south)



Location of proposed Stop Control at the "T" intersection at E. 1st Street and "F" Avenue (looking north)



Location of proposed Stop Control at the intersection at E. 2nd Street and "F" Avenue (looking south)



Location of proposed Stop Control at the intersection at E. 2nd Street and "F" Avenue (looking west)



Location of proposed Stop Control at the "T" intersection at E. 2nd Street and "G" Avenue (looking south)



Location of proposed Stop Control at the "T" intersection at E. 2nd Street and "G" Avenue (looking north)



Location of proposed Stop Control at the intersection at E. 3rd Street and "G" Avenue (looking south)



Location of proposed Stop Control at the intersection at E. 3rd Street and "G" Avenue (looking east)



Location of proposed Stop Control at the intersection at E. 3rd Street and "E" Avenue (looking east)



Location of proposed Stop Control at the intersection at E. 3rd Street and "E" Avenue (looking south)



Location of proposed Stop Control at the "T" intersection at E. 2nd Street and "E" Avenue (looking north)



Location of proposed Stop Control at the "T" intersection at E. 2nd Street and "E" Avenue (looking south)

Volumes for: Monday, June 04, 2018

Tuesday, June 05, 2018

Location: E. 2nd St. east of F Ave.

City: National City

Project# 18-1267-001

2-DAY AVERAGE

AM Period	NB		SB		EB		WB			PM Period	NB		SB		EB		WB		
00:00	0		O		0		1			12:00	0		0		2		4		
00:15	0		0		1		1			12:15	0		0		3		4		
00:30	0		0		1		0			12:30	0		0		3		3		
00:45	0	0	0	0	1	2	0	1	3	12:45	0	0	0	0	3	10	2	11	21
01:00	0		0		1		1			13:00	0		0		4		4	***	
01:15	0		0		0		1			13:15	0		0		4		2		
01:30	0		0		0		0			13:30	0		0		2		2		
01:45	0	0	0	0	0	1	0	1	2	13:45	0	0	0	0	4	12	4	12	24
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03:45	0	0	0	0	0	2	1	2	3	15:45	0	0	0	0	5	14	3	16	30
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05:30	0		0		1		2			17:30	0		0		4		7		
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11:45	0	0	0	0	6	18	2	9	26	23:45	0	0	0	0	0	3	1	1	4
Total Vol.						95		41	136							94		146	240
PS Coordinate:	s:	3	2.682882,	-117.102.	385	.05		3.5				NB		SB	D	aily Tot	als	4,154	Combined
											7					189		187	375
Calit 0/	4				Α	M 201		20 20/	26 10/		-					PM		CO 004	C2 00/
Split %						69.7%			36.1%							39.2%		60.8%	63.9%
Peak Hour						09:00		11:30	11:30							15:00		17:30	17:30
Volume						20		12	27							14		25	37
P.H.F.						0.71		0.86	0.83							0.78		0.78	0.77

Volumes for: Monday, June 04, 2018

Tuesday, June 05, 2018

Location: F Ave. south of E. 2nd St.

City: National City

Project# 18-1267-002

2-DAY AVERAGE

AM Period	NB		SB		EB		WB			PM Period	NB		SB		EB		WB		
00:00	1		0		0		0			12:00	2		3		0		0		
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00:45	1	3	0	0	0	0	0	0	3	12:45	1	8	1	10	0	0	0	0	17
01:00	2		1		0		0			13:00	3		2		0		0		
01:15	0		0		0		0			13:15	2		3		0		0		
01:30	0		0		0		0			13:30	2		2		0		0		
01:45	0	2	0	1	0	0	0	0	2	13:45	1	7		9	0	0	0	0	16
02:00	0		0		0		0			14:00	3		2		0		0		
02:15	0		0		0		0			14:15	2		2		0		0		
02:30	0		0		0		0			14:30	2		3		0		0		
02:45	1	1	0	0	0	0	0	0	1	14:45	3	10		11	0	0	0	0	21
03:00	0		0		0		0			15:00	6		4		0		0		
03:15	0		0		0		0			15:15	5		5		0		0		
03:30	0		0		0		0			15:30	4		3		0		0		
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04:30	1	-	0		0	0	0	0	2	16:30	4	46	4		0	0	0		
04:45	2	2		1		0	0	0	3	16:45	4	15		11	0	0	0	0	25
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05:15	1		0		0		0			17:15	5		2		0		0		
05:30	1		0		0	12	0	- 2		17:30	4	100	4		0		0		
05:45	1	4	1	1	0	0	0	0	4	17:45	2	13		11	0	0	0	0	24
06:00	1		1		0		0			18:00	5		3		0		0		
06:15	1		1		0		0			18:15	2		2		0		0		
06:30	2		1		0		.0			18:30	1		3		0		0		
06:45	2	5	1	3	0	0	0	0	8	18:45	1	8	1	8	0	0	0	0	16
07:00	5		1		0		0			19:00	2		2		0		0		
07:15	2		3		0		0			19:15	2		2		0		0		
07:30	3		2		0		0			19:30	1		3		0		0		
07:45	3	12	1	6	0	0	0	0	18	19:45	1	5	2	9	0	0	0	0	14
08:00	5		4		0		0			20:00	1		3		0		0		
08:15	2		4		0		0			20:15	2		3		0		0		
08:30	4		4		0		0			20:30	2		2		0		0		
08:45	5	15	3	13	0	0	0	0	28	20:45	1	4	3	11	0	0	0	0	15
09:00	2		2		0		0			21:00	.0		1		0		0		
09:15	1		1		0		0			21:15	1		2		0		0		
09:30	1		1		0		0			21:30	0		2		0		0		
09:45	2	5	1	5	0	0	0	0	9	21:45	2	2		5	0	0	0	0	7
10:00	2		4		0		0			22:00	2		1		0		0		
10:15	4		1		0		0			22:15	2		1		0		0		
10:30	1		2		0		0			22:30	2		1		0		0		
10:45	3	9	2	9	0	0	0	0	17	22:45	1	5		3	0	0	0	0	8
11:00	1		4		0		0		~	23:00	0		0		0	-	0		U
11:15	2		2		0		0			23:15	1		1		0		0.		
11:30	1		2		0		0			23:30	0		1		0		0		
11:45	4	7	2	9	0	0	0	0	15	23:45	1	2		2	0	0	0	0	4
										20.10	- 4								
Total Vol.		62		45					107			92	1	.02					194
GPS Coordinates	s:	32	2.682380,	-117.1026	149							NB	1	SB	Da	aily Tot	als		Combined
												154		47		21.5			301
20,000				+55,690	A	M										РМ			
Split %		57.9%		42.1%				-	35.6%		-	47.3%		.7%					64.4%
Peak Hour		08:00		08:00					08:00			14:45		1:30					14:45
Volume		15		13					28			17		15					32
P.H.F.		0.83		0.93					0.88			0.75	0	.83					0.83

The following page(s) contain the backup material for Agenda Item: Resolution of the City Council of the City of National City authorizing to remove the existing time restricted parking in front of the residence located at 1039 D Avenue (TSC No. 2018-14). (Engineering/Public Works)

CITY OF NATIONAL CITY, CALIFORNIA COUNCIL AGENDA STATEMENT

MEETING DATE:	July 24, 2018		AGENDA ITEM NO.
	City Council of the City of Nat the residence located at 1039 "D		e the existing time restricted
PREPARED BY: PHONE: 619-336 EXPLANATION: See attached.	Luca Zappiello, Junior Engine -4360	eer – Civil DEPARTMENT APPROVED BY	F: Engineering/Public Works Y: Manymidle
FINANCIAL STAT	EMENT:	APPROVED:	Finance MIS
ACCOUNT NO. N/A		APPROVED:	NIIS
<u>ENVIRONMENTA</u> N/A	<u>L REVIEW</u> :	•	
ORDINANCE: IN	ITRODUCTION: FINAL	ADOPTION:	·
STAFF RECOMM Adopt a Resolution Avenue.	ENDATION: authorizing to remove the existing	time restricted parking in front of	the residence located at 1039 "D"
BOARD / COMMI At their meeting on	SSION RECOMMENDATION: June 20, 2018, the Traffic Safety ng in front of the residence located		imendation to remove the existing
	on w/ Exhibit ort to the Traffic Safety Comm	nittee on June 20, 2018 (TSC	No. 2018-14)

3. Resolution

EXPLANATION

Area residents have requested the removal of the existing time restricted parking in front of the residence located at 1039 "D" Avenue.

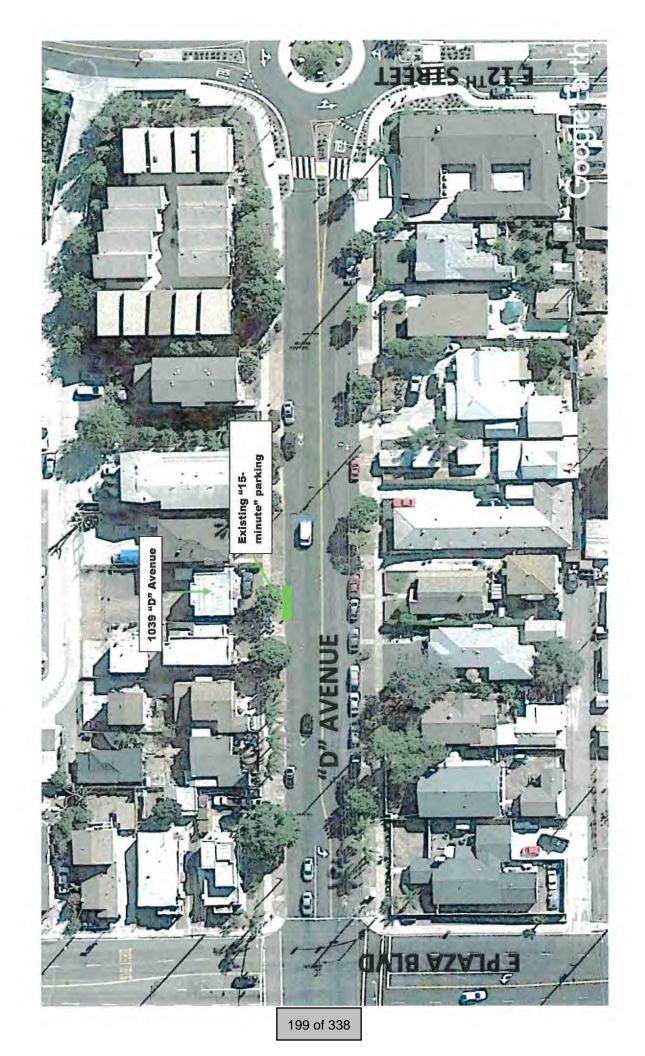
Staff visited the site. The residence at 1039 "D" Avenue is located in a residential area on the east side of "D" Avenue between E Plaza Boulevard and E 12th Street. "D" Avenue is a 2-lane local roadway with unrestricted parallel parking on both sides on the street and prima facie speed limits of 30 mph. It should be noted that there are no businesses located in this area.

Staff confirmed that there are twenty (20) feet of existing time restricted "15-minute" parking in front of the residence located at 1039 "D" Avenue. Since the existing time restricted parking sign is located in a residential area where there is no need for parking turnover, staff recommends the removal of twenty (20) feet of existing time restricted "15-minute" parking.

Staff sent notices to area property owners and residents, including the owner of 1039 "D" Avenue, inviting them to attend the Traffic Safety Committee Meeting and/or contact staff with any questions.

This item was presented to the Traffic Safety Committee on June 20, 2018. There were no members of the community present to speak on the item. Staff presented the results of the site evaluation and after discussion, the Traffic Safety Committee voted to approve staff's recommendation to remove of the existing time restricted parking in front of the residence located at 1039 "D" Avenue.

If approved by City Council, all work will be performed by City Public Works.



NATIONAL CITY TRAFFIC SAFETY COMMITTEE AGENDA REPORT FOR JUNE 20, 2018

ITEM NO. 2018-14

ITEM TITLE:

REQUEST TO REMOVE THE EXISTING TIME RESTRICTED PARKING IN FRONT OF THE RESIDENCE LOCATED AT 1039

"D" AVENUE

PREPARED BY:

Luca Zappiello, Junior Engineer - Civil

Engineering & Public Works Department

DISCUSSION:

Area residents have requested the removal of the existing time restricted parking in front of the residence located at 1039 "D" Avenue.

Staff visited the site. The residence at 1039 "D" Avenue is located in a residential area on the east side of "D" Avenue between E Plaza Boulevard and E 12th Street. "D" Avenue is a 2-lane local roadway with unrestricted parallel parking on both sides on the street and prima facie speed limits of 30 mph. It should be noted that there are no businesses located in this area.

Staff confirmed that there are twenty (20) feet of existing time restricted "15-minute" parking in front of the residence located at 1039 "D" Avenue. Since the existing time restricted parking sign is located in a residential area where there is no need for parking turnover, staff recommends the removal of twenty (20) feet of existing time restricted "15-minute" parking.

Staff sent notices to area property owners and residents, inviting them to attend the Traffic Safety Committee Meeting and/or contact staff with any questions.

STAFF RECOMMENDATION:

Based on an evaluation of existing conditions, staff recommends the removal of twenty (20) feet of existing time restricted "15-minute" parking in front of the residence located at 1039 "D" Avenue.

If approved by City Council, all work will be performed by City Public Works.

EXHIBITS:

- 1. Public Request
- 2. Public Notice
- 3. Location Map
- 4. Photos



PUBLIC REQUEST FORM

Name: Anonymous	_
Address:	_
Phone: Email:	-
ocation: 1039 "D" Avenue	
Request: Request of removal existing "15-minute" parking in front of the residence	_
Request:	, –
	_
	
	_
	-
Attachments: Yes No Description:	_
Request Received By: L. Zappiello Date: May 2, 2018	
Received via: Counter/In-Person Telephone Emall Fax Referral:	
Assigned To: L. Zappiello	_
Notes:	-
101031	



June 13, 2018

Resident/Property Owner

Subject: TRAFFIC SAFETY COMMITTEE (TSC) ITEM NO. 2018-14

REQUEST TO REMOVE THE EXISTING TIME RESTRICTED PARKING IN FRONT OF THE RESIDENCE LOCATED AT 1039 "D" AVENUE

Dear Sir/Madame:

The City of National City would like to invite you to our next public Traffic Safety Committee Meeting scheduled for **Wednesday**, **June 20**, **2018**, **at 1:00 P.M**. in the 2nd Floor Large Conference Room of the Civic Center Building, 1243 National City Boulevard, to discuss the above-referenced item.

The City Hall is ADA compliance. Please note that there are two disabled persons parking spaces in front of City Hall on the east side of National City that provide direct access on the 2nd Floor of City Hall via a pedestrian bridge.

If you have any questions, comments, and/or concerns, please contact the Engineering Department at 619-336-4380 and reference Traffic Safety Committee Item Number 2018-14.

Sincerely,

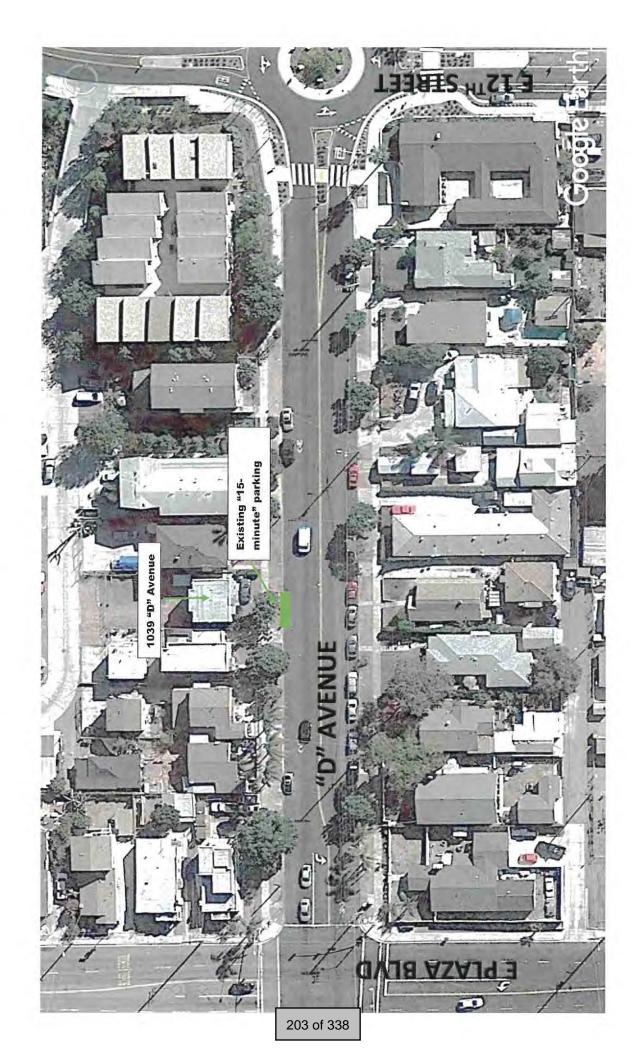
Stephen Manganiello

hom 7. Marganiello

City Engineer

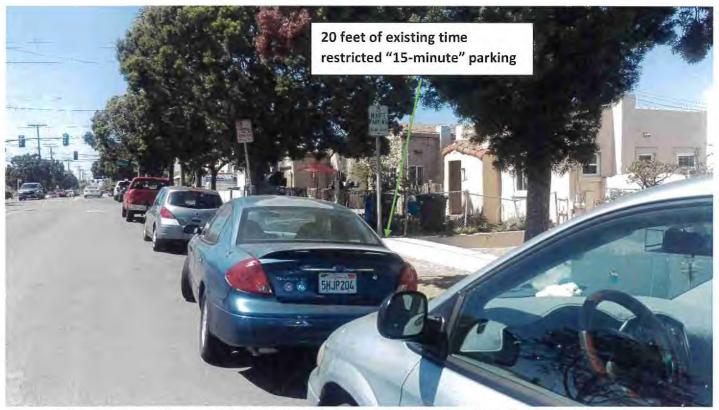
SM:Iz

Enclosure: Location Map





Location of requested removal of the existing time restricted parking located at 1039 D Avenue (looking east)



Location of requested removal of the existing time restricted parking located at 1039 D Avenue (looking north)

The following page(s) contain the backup material for Agenda Item: Resolution of the City Council of the City of National City authorizing to remove the existing time restricted parking in front of the building located at 1900 Wilson Avenue (TSC No. 2018-15). (Engineering/Public Works)

CITY OF NATIONAL CITY, CALIFORNIA COUNCIL AGENDA STATEMENT

AGENDA ITEM NO. MEETING DATE: July 24, 2018 ITEM TITLE: Resolution of the City Council of the City of National City authorizing to remove the existing time restricted parking in front of the building located at 1900 Wilson Avenue (TSC No. 2018-15). **DEPARTMENT:** Engineering/Public Works PREPARED BY: Luca Zappiello, Junior Engineer – Civil APPROVED BY: PHONE: 619-336-4360 My M. Muyanill **EXPLANATION:** See attached. APPROVED: Finance FINANCIAL STATEMENT: MIS ACCOUNT NO. APPROVED: N/A ENVIRONMENTAL REVIEW: N/A ORDINANCE: INTRODUCTION: FINAL ADOPTION: STAFF RECOMMENDATION: Adopt a Resolution authorizing to remove the existing time restricted parking in front of the building located at 1900 Wilson Avenue BOARD / COMMISSION RECOMMENDATION: At their meeting on June 20, 2018, the Traffic Safety Committee approved staff's recommendation to remove the existing time restricted parking in front of the building located at 1900 Wilson Avenue ATTACHMENTS:

206 of 338

2. Staff Report to the Traffic Safety Committee on June 20, 2018 (TSC No. 2018-15)

1. Explanation w/ Exhibit

3. Resolution

EXPLANATION

Mr. Orlando Perez, an area resident, has requested the removal of the existing time restricted "30-minute" parking in front of the building located at 1900 Wilson Avenue. Mr. Perez stated that the property has been vacant for more than three years and there are two unutilized time-restricted "30-minute" parking spaces in front of the building. Mr. Perez also stated that since Saint Anthony's Catholic church is located nearby, all of the available on-street parking is heavily impacted during mass hours. Mr. Perez indicated that the removal of the existing time restricted "30-minute" parking in front of the building at 1900 Wilson Avenue would alleviate the parking problem by providing additional parking available for area residents.

Staff visited the site. The building at 1900 Wilson Avenue is located on the west side of the intersection at Wilson Avenue and W. 19th Street. At this address, Wilson Avenue is a 2-lane roadway with unrestricted parallel parking available on both sides on the street and prima facie speed limits of 30 mph. This area is residential and commercial.

Staff confirmed that there are forty (40) feet of existing time restricted "30-minute" parking in front of the building at 1900 Wilson Avenue. Staff confirmed that the building is vacant at this time and that there are four private parking spaces located in the rear of the building.

Staff also confirmed that there is a parking lot at Saint Anthony's Catholic church on the northeast corner of Wilson Avenue and W. 19th Street.

Staff sent notices to area property owners and tenants, inviting them to attend the Traffic Safety Committee Meeting and/or contact staff with any questions.

This item was presented to the Traffic Safety Committee on June 20, 2018. Mr. Perez's wife, Mrs. Rosalie Perez, was in attendance and spoke in support of the removal of the existing time restricted "30-minute" parking in front of the building located at 1900 Wilson Avenue. Staff presented the results of the site evaluation and after discussion, the Traffic Safety Committee voted to approve staff's recommendation to remove of the existing time restricted parking in front of the building located at 1900 Wilson Avenue.

If approved by City Council, all work will be performed by City Public Works.

Location Map with Existing Conditions (TSC Item: 2018-14)



NATIONAL CITY TRAFFIC SAFETY COMMITTEE AGENDA REPORT FOR JUNE 20, 2018

ITEM NO. 2018-15

ITEM TITLE:

REQUEST TO REMOVE THE EXISTING TIME RESTRICTED "30-MINUTE" PARKING IN FRONT OF THE BUILDING LOCATED AT

1900 WILSON AVENUE

PREPARED BY:

Luca Zappiello, Junior Engineer - Civil Engineering & Public Works Department

DISCUSSION:

Mr. Orlando Perez, an area resident, has requested the removal of the existing time restricted "30-minute" parking in front of the building located at 1900 Wilson Avenue. Mr. Perez stated that the property has been vacant for more than three years and there are two unutilized time-restricted "30-minute" parking spaces in front of the building. Mr. Perez also stated that since Saint Anthony's Catholic church is located nearby, all of the available onstreet parking is heavily impacted during mass hours. Mr. Perez indicated that the removal of the existing time restricted "30-minute" parking in front of the building at 1900 Wilson Avenue would alleviate the parking problem by providing additional parking available for area residents.

Staff visited the site. The building at 1900 Wilson Avenue is located on the west side of the intersection at Wilson Avenue and W. 19th Street. At this address, Wilson Avenue is a 2-lane roadway with unrestricted parallel parking available on both sides on the street and prima facie speed limits of 30 mph. This area is residential and commercial.

Staff confirmed that there are forty (40) feet of existing time restricted "30-minute" parking in front of the building at 1900 Wilson Avenue. Staff confirmed that the building is vacant at this time and that there are four private parking spaces located in the rear of the building.

Staff also confirmed that there is a parking lot at Saint Anthony's Catholic church on the northeast corner of Wilson Avenue and W. 19th Street.

Staff sent notices to area property owners and tenants, inviting them to attend the Traffic Safety Committee Meeting and/or contact staff with any questions.

STAFF RECOMMENDATION:

Based on an evaluation of existing conditions, staff recommends the removal of forty (40) feet of existing time restricted "30-minute" parking in front of the building located at 1900 Wilson Avenue.

If approved by City Council, all work will be performed by City Public Works.

EXHIBITS:

1. Public Request

- 2. Public Notice
- 3. Location Map
- 4. Photos



PUBLIC REQUEST FORM

_{Name:} Orlando F	Perez
Address: 1836 W	Ison Avenue
Phone:	Email:
Location: 1900 W	ilson Avenue
	of removal existing 30 minute parking in front of the building
Attachments: Yes	No Description:
	7 1 1 1 1 1 1 1
Request Received By: _	_ Zappiello April 18, 2018
	ter/In-Person Telephone Email Fax Referral:
Assigned To: L. Zapp	DIEIIO
Notes:	



June 13, 2018

Resident/Property Owner

Subject: TRAFFIC SAFETY COMMITTEE (TSC) ITEM NO. 2018-15

REQUEST TO REMOVE THE EXISTING TIME RESTRICTED PARKING IN FRONT OF THE COMMERCIAL BUILDING LOCATED AT 1900 WILSON AVENUE

Dear Sir/Madame:

The City of National City would like to invite you to our next public Traffic Safety Committee Meeting scheduled for **Wednesday**, **June 20**, **2018**, **at 1:00 P.M**. in the 2nd Floor Large Conference Room of the Civic Center Building, 1243 National City Boulevard, to discuss the above-referenced item.

The City Hall is ADA compliance. Please note that there are two disabled persons parking spaces in front of City Hall on the east side of National City that provide direct access on the 2nd Floor of City Hall via a pedestrian bridge.

If you have any questions, comments, and/or concerns, please contact the Engineering Department at 619-336-4380 and reference Traffic Safety Committee Item Number 2018-15.

Sincerely,

Stephen Manganiello

typhon 7. Marganiello

City Engineer

SM:Iz

Enclosure: Location Map

Location Map with Existing Conditions (TSC Item: 2018-14)





Location of requested removal of the existing time restricted parking located at 1900 Wilson Avenue (looking west)



Location of requested removal of the existing time restricted parking located at 1900 Wilson Avenue (looking south)

The following page(s) contain the backup material for Agenda Item: Temporary Use Permit – Pumpkin Station hosted by Pinery Christmas Trees, Inc. at Westfield Plaza Bonita Mall from September 28, 2018 thru October 31, 2018 with no waiver of fees. (Neighborhood Services)

CITY OF NATIONAL CITY, CALIFORNIA COUNCIL AGENDA STATEMENT

MEETING DATE: July 24, 2018 AGENDA ITEM NO .: ITEM TITLE: Temporary Use Permit – Pumpkin Station hosted by Pinery Christmas Trees, Inc. at Westfield Plaza Bonita Mall from September 28, 2018 thru October 31, 2018 with no waiver of fees. DEPARTMENT: Neighborhood Services
APPROVED BY: PREPARED BY: Dionisia Trejo PHONE: 619-336-4255 **EXPLANATION:** This is a request from Pinery Christmas Trees to host the annual Pumpkin Station at Plaza Bonita Mall from September 28, 2018 thru October 31, 2018. Daily hours will be from 9 a.m. to 9 p.m. Pumpkin Station will be located on the eastside parking lot #7 of the mall adjacent to Ring Road. This event is a pumpkin patch and a children's carnival combined catering to children between the ages of 2-9. Event will include a kid's play center and several rides, an inflatable pumpkin jump and a petting zoo. Plaza Bonita Mall security will be used during event hours. Note: This is the 15th year for the Pumpkin Station at Plaza Bonita Mall. FINANCIAL STATEMENT: APPROVED: _____ FINANCE ACCOUNT NO. APPROVED: MIS City fee of \$237.00 for processing the TUP, plus \$1,100.00 for Fire permits. Total fees: \$1,337,00 **ENVIRONMENTAL REVIEW:** N/A ORDINANCE: INTRODUCTION | FINAL ADOPTION STAFF RECOMMENDATION: Approve the Application for a Temporary Use Permit subject to compliance with all conditions of approval with no waiver of fees or in accordance to City Council Policy 802. **BOARD / COMMISSION RECOMMENDATION:** ATTACHMENTS: Application for a Temporary Use Permit with recommended approvals and conditions



City of National City ■ Neighborhood Services Department 1243 National City Boulevard ■ National City, CA 91950 (619) 336-4364 ■ fax (619) 336-4217 www.nationalcityca.gov

Special Event Application

Type of Event			
☐ Fair/Festival	☐ Parade/March ☐	☐ Walk or Run ☐ Concert/Perform	nance
■ TUP	Sporting Event	Other (specify)	
Event Name & L	_ocation	P	
Event Title Pumpki			
Event Location (list	all sites being requested)	Westfield Plaza Bonita	
Event Times			
Set-Up Starts Date 9/7/18	Time 8:00 am	Day of Week	
Event Starts Date <u>9/28/18</u>	Time	Day of Week	
Event Ends Date 10/31/18	Time 9:00 pm	Day of Week	RECEIVED
Breakdown Ends Date 11/5/18	Time 5:00 pm	Day of Week Monday	JUN 2.7 2018 Neighborhood Services Department
Applicant Inforn	nation	_	City of National City
Applicant (Your nan	ne) Norm Osborne	Sponsoring Organization Pinery	Christmas Trees
Event Coordinator (if different from applicant)	Michael Osborne	
Mailing Address 10	665 Brookview Lane, San I	Diego, CA. 92131	
Day Phone 858-566	6-7466 After Hours Phone	e <u>same</u> Cell <u>858-688-1701</u>	1_Fax
Public Information F	Phone 858-566-7466	_ E-mail	_
Applicant agrees to in from and against an (including attorney's fe may incur, sustain or bodily injury to or dea invitees of each party	evestigate, defend, indemnify y and all loss, damage, lial ees) and causes of action of a be subjected to on account cath of any persons (including	and hold harmless the City, its officers, en bility, claims, demands, detriments, cost any character which the City, its officers, e of loss or damage to property or the loss of but not limited to the employees, subcomy way connected to the occupancy, enjoy	mployees and agents ts, charges, expense employees and agents of use thereof and for entractors, agents and
City's Finance Departr	nent 48 hours prior to the eve application processing and fa	mplicate fees for City services, which will h nt set-up. The undersigned also understar collity use and that fees and charges are ac	nds and accents the
Signature of Applica	nt: flow	Jan Date	6/26/18
			/

Special Event Application (continued) Please complete the following sections with as much detail as possible since fees and requirements are based on the information you provide us.
Fees/Proceeds/Reporting
Is your organization a "Tax Exempt, nonprofit" organization? Yes No
Are admission, entry, vendor or participant fees required? Yes ☐ No ■
If YES, please explain the purpose and provide amount (s):
\$\frac{150,000}{\text{event.}}\$ Estimated Gross Receipts including ticket, product and sponsorship sales from this event. \$\frac{125,000}{\text{Estimated Expenses for this event.}}\$ What is the projected amount of revenue that the Nonprofit Organization will receive as a result of this event?
Description of Event
☐ First time event ☐ Returning Event ☐ include site map with application
Note that this description may be published in our City Public Special Events Calendar: Pumpkins, Kiddie Rides & Games far Children ages 2-9 years old.

Anticipated # of Participants: _____ Anticipated # of Spectators: _____

Estimated Attendance

Traffic Control, Security, First Aid and Accessibility

Requesting to close street(s) to vehicular traffic? Yes No
List any streets requiring closure as a result of the event (provide map):
Date and time of street closure: Date and time of street reopening:
Other (explain)
Requesting to post "no parking" notices? Yes No
Requested "No Parking" on city streets and/or parking lots (list streets/parking lots) (provide map):
Other (explain)
Security and Crowd Control
Depending on the number of participants, your event may require Police services.
Please describe your procedures for both Crowd Control and Internal Security: We use Westfield Mall security as needed.
Have you hired Professional Security to handle security arrangements for this event?
Yes ☐ No ■ If YES, name and address of Security Organization
Security Director (Name): Phone:
If using the services of a professional security firm AND the event will occur on City property, please provide a copy of its insurance certificate, evidencing liability with limits of at least \$1 Million dollars per occurance/\$2 Million dollars aggregate, as well as and additional insured endorsement naming the City of National City, its officers, employees, and agents as additional insureds. Evidence of insurance must be provided by the vendor or its insurer to the City's Risk Manager for review and approval prior to the event.
Is this a night event? Yes No I If YES, please state how the event and surrounding area will be illuminated to ensure safety of the participants and spectators: We use halogens, string lights and
light towers.
3

First Aid

Depending on the number of participants, your event may require specific First Aid services.	
First aid station to be staffed by event staff? Yes 🗆 No 🗏 First aid/CPR certified? Yes 🗀 No 🗀	
☐ First aid station to be staffed by professional company. ▶ Company	
Accessibility	
Please describe your Accessibility Plan for access at your event by individuals with disabilities: We have 5 Handicap Parking Spaces reserved at the entrance to the facility.	
Elements of your Event	
Setting up a stage? Yes □ No ■	
Requesting City's PA system	
☐ Requesting City Stage, if yes, which size? ☐ Dimensions (13x28) ☐ Dimensions (20x28)	
☐ Applicant providing own stage ► (Dimensions)	
Setting up canopies or tents?	
# of canopies size	
4 # of tents size 20 X 40	
☐ No canopies/tents being set up	
Setting up tables and chairs?	
☐ Furnished by Applicant or Contractor	
# of tables No tables being set up	
# of chairs No chairs being set up	
☐ (For City Use Only) Sponsored Events – Does not apply to co-sponsored events	
# of tables No tables being set up	
# of chairs	
Contractor Name	
Contractor Contact Information	

Securing up other equipment?
☐ Sporting Equipment (explain)
Other (explain)
☐ Not setting up any equipment listed above at event
Having amplified sound and/or music? Yes ☐ No ■
☐ PA System for announcements ☐ CD player or DJ music
☐ Live Music ► ☐ Small 4-5 piece live band ► ☐ Large 6+ piece live band
Other (explain)
If using live music or a DJ. ▶ Contractor Name
Address City/State Phone Number
Using lighting equipment at your event? Yes No
Bringing in own lighting equipment
☐ Using professional lighting company ► Company Name
Address City/State Phone Number
Using electrical power? Yes ■ No □
■ Using on-site electricity ☐ For sound and/or lighting ☐ For food and/or refrigeration
☐ Bringing in generator(s) ☐ For sound and/or lighting ☐ For food and/or refrigeration
Vendor Information
PLEASE NOTE: You may be required to apply for a temporary health permit if food or beverages are sold of given away during your special event. Also see 'Permits and Compliance' on page 8 in the Special Event Guide. For additional information on obtaining a temporary health permit, please contact the County of San Diego Environmental Health at (619) 338-2363.
Having food and non-alcoholic beverages at your event? Yes \(\Boxed{\square}\) No
☐ Vendors preparing food on-site ► # ► Business License #
If yes, please describe how food will be served and/or prepared:
If you intend to cook food in the event area please specify the method: GAS ELECTRIC CHARCOAL OTHER (Specify):
☐ Vendors bringing pre-packaged food ► # ► Business License #
☐ Vendors bringing bottled, non-alcoholic beverages (i.e., bottled water, can soda, etc.) ▶ #
☐ Vendors selling food # ► Business License #(s)
☐ Vendors selling merchandise # ► Business License #(s)

Food/beverages to be handled by organization	kilon, no duiside vendors
☐ Vendors selling services # ► Bu	siness License #(s)
► Explain services	<u> </u>
☐ Vendors passing out information only (no b	usiness license needed) #
► Explain type(s) of information	
No selling or informational vendors at event	t
Having children activities? Yes ■ No□	
requires commercial liability insurance with lim dollars aggregate. In addition, the City of Natio pursuant to a separate endorsement, which sh Risk Manager, along with the Certificate of Insu should be filed out at least one week prior to the	are provided at the event, The City of National City its of at least \$1 Million dollars per occurrence/\$2 Million nal City must be named as an Additional Insured all be provided by the vendor or its insurer to the City's urance, for approval prior to the event. The application is event. There is a \$25 fee to process the permit of the "Facility Use Application", please contact the 336-4580.
Inflatable bouncer house #	Rock climbing wall Height
	Arts & crafts (i.e., craft making, face painting, etc.)
Other	
Having fireworks or aerial display? Yes 🗌	No 🗏
	Duration
	Max. size
PLEASE NOTE: In the event fireworks or ano National City requires commercial liability insur occurrence/ \$4 Million dollars aggregate. In additional Insured pursuant to a separate endoinsurer to the City's Risk Manager, along with tevent. Depending on the size and/or nature of	ther aerial display is planned for your event, The City of rance with limits of at least \$2 Million dollars per dition, the City of National City must be named as an orsement, which shall be provided by the vendor or its he Certificate of Insurance, for approval prior to the the fireworks display, the City reserves the right to also obtain a fireworks permit from the National City Fire
Arranging for media coverage? Yes□ No	· •
Yes, but media will not require special set-u	qu
Yes, media will require special set-up. Des	cribe

Event Signage

PLEASE NOTE: For City sponsored or co-sponsored events, banners publicizing the event may be placed on the existing poles on the 1800 block and 3100 block of National City Boulevard. The banners must be made to the City's specifications. Please refer to the City's Special Event Guidebook and Fee Schedule for additional information.

Are you planning to have signage at your event? Yes No
Yes, we will post signage # 1 Dimensions 4 X 8
☐ Yes, having inflatable signage # ► (complete Inflatable Signage Request form)
☐ Yes, we will have banners #
☐ What will signs/banners say?
How will signs/banners be anchored or mounted?
Waste Management
PLEASE NOTE: One toilet for every 250 people is required, unless the applicant can show that there are <u>sufficient</u> facilities in the immediate area available to the public during the event.
Are you planning to provide portable restrooms at the event? Yes 🔳 No 🗌
If yes, please identify the following:
► Total number of portable toilets: 4
► Total number of ADA accessible portable toilets. 1
■ Contracting with portable toilet vendor. Diamond Environmental 760-744-7191
► Load-in Day & Time Daily Company Phone Load-out Day & Time
■ Portable toilets to be serviced. ► Time Daily
Set-up, Breakdown, Clean-up
Setting up the day before the event?
Yes, will set up the day before the event.
☐ No, set-up will occur on the event day
Requesting vehicle access onto the turf?
Yes, requesting access onto turf for set-up and breakdown (complete attached Vehicle Access Request form)
No. vehicles will load/unload from nearby street or parking lot

NPDES-Litter Fence
City to install litter fence
Applicant to install litter fence
■ N/A
Breaking down set-up the day after the event?
☐ Yes, breakdown will be the day after the event. ▶ # of breakdown day(s)
☐ No, breakdown will occur on the event day.
How are you handling clean-up?
Using City crews ■
Using volunteer clean-up crew during and after event.
☐ Using professional cleaning company during and after event.
Miscellaneous
Please list anything important about your event not already asked on this application:

Please make a copy of this application for your records.

We do not provide copies.



Special Events

Pre-Event Storm Water Compliance Checklist

Name of Special Event: Pumpkin Station	
Event Address: 3030 PLaza Boníta Rd	Expected # of Attendees:
Event Host/Coordinator: Michael Osborne	Phone Number: 858-688-1701

II. Storm Water Best Management Practices (BMPs) Review

	YES	NO	N/A
Will enough trash cans provided for the event?			
Provide number of trash bins: 8	X		
Will enough recycling bins provided for the event?			
Provide number of recycle bins: 2	X		
Will all portable tollets have secondary containment trays? (exceptions for ADA compliant portable tollets)	X		
Do all storm drains have screens to temporarily protect trash and debris from entering?	X		
Are spill cleanup kits readily available at designated spots?	x		

^{*} A Post-Event Storm Water Compliance Checklist will be completed by City Staff.

City of National City

PUBLIC PROPERTY USE HOLD HARMLESS AND INDEMNIFICATION AGREEMENT

Persons requesting use of City property, facilities or personnel are required to provide a minimum of \$1,000,000 combined single limit insurance for bodily injury and property damage which includes the City, its officials, agents and employees named as additional insured and to sign the Hold Harmless Agreement. Certificate of insurance must be attached to this permit. The insurance company issuing the insurance policy must have a A.M. Best's Guide Rating of A:VII and that the insurance company is a California admitted company; if not, then the insurance policy to the issuance of the permit for the event. The Certificate Holder must reflect:

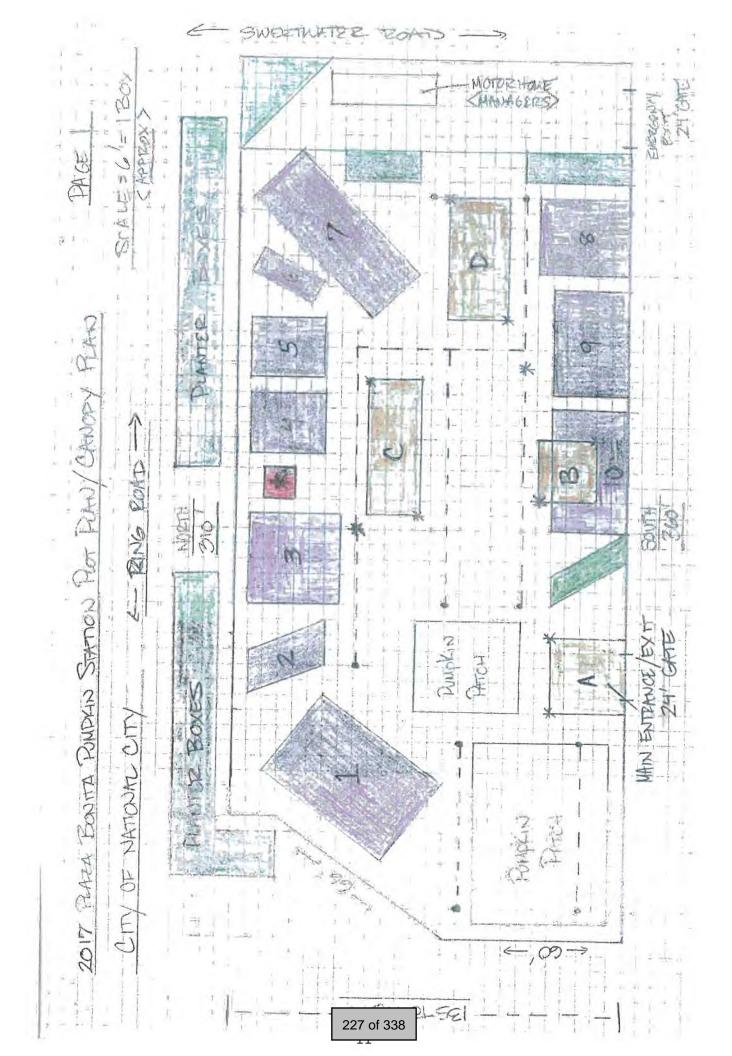
City of National City Risk Management Department 1243 National City Boulevard National City, CA 91950

Organization: ₋	Pinery Christmas Trees, Inc., dba Pumpkin Station	
	rge of Activity: Michael Osborne	
	5 Brookview Lane, San Diego, CA. 92131	
Telephone:	Date(s) of Use:	

HOLD HARMLESS AGREEMENT

As a condition of the issuance of a temporary use permit to conduct its activities on public or private property, the undersigned hereby agree(s) to defend, indemnify and hold harmless the City of National City and the Parking Authority and its officers, employees and agents from and against any and all claims, demands, costs, losses, liability or, for any personal injury, death or property damage, or both, or any litigation and other liability, including attorneys fees and the costs of litigation, arising out of or related to the use of public property or the activity taken under the permit by the permittee or its agents, employees or contractors.

Signature of Applicant:		
Official Title:	Date:	
For Office Use Only		
Certificate of Insurance Approved	Date	



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CITY OF NATIONAL PLITY

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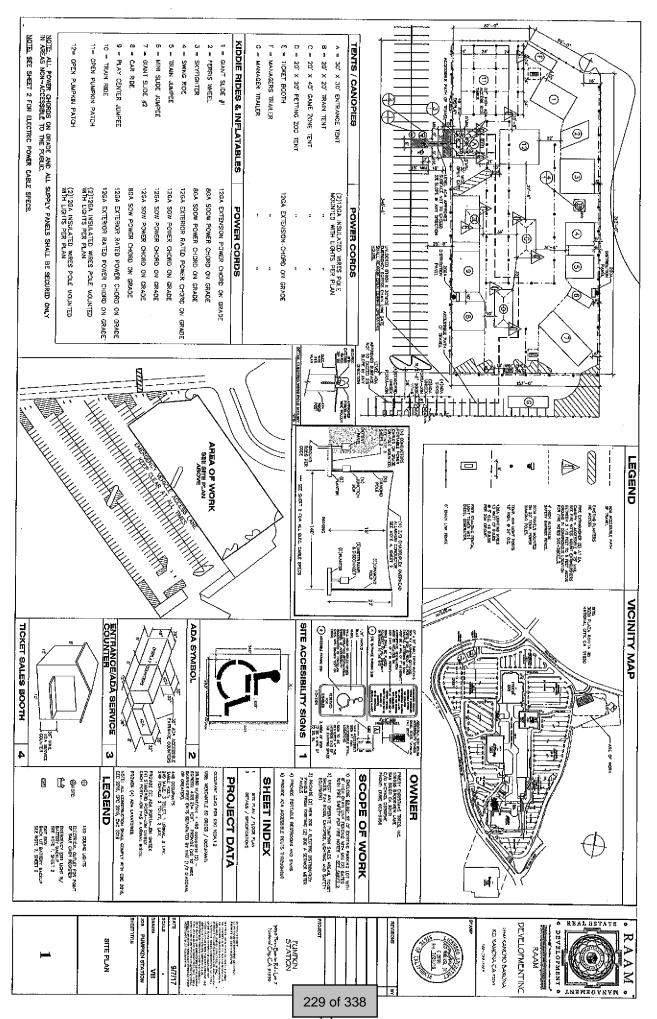
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- Erock / Harry ES

- CASOPES

- LANER BOXES





Westfield Plaza Bonita 3030 Plaza Bonita Road Suite 2075 San Diego, CA 91950 T (619) 267-2850 F (619) 472-5652

June 18, 2018

City of National City
Attention: Vianey Rivera
Neighborhood Services Division
1243 National City Boulevard
National City, California 91950-4301

Re:

Temporary Use Permit

Pumpkin Station - Westfield Plaza Bonita

Dear Ms. Rivera:

I hereby authorize Norm Osborne, acting as representative of Pinery Christmas Trees, Inc., to operate a business known as Pumpkin Station in parking lot #7 at Westfield Plaza Bonita during the dates of September 7, 2018 – November 5, 2018.

Norm Osborne has permission to install temporary power to poles in parking lot #7 to provide power during the temporary use time if adequate power is not already in place.

Norm Osborne will obtain all necessary permits from National City for occupancy at Westfield Plaza Bonita.

Please feel free to call me if you have any questions at 619.267.2850.

Thank you,

Jessica O'Brien General Manager

Westfield Plaza Bonita

Cc: retailers file



CITY OF NATIONAL CITY NEIGHBORHOOD SERVICES DEPARTMENT APPLICATION FOR A TEMPORARY USE PERMIT RECOMMENDATIONS AND CONDITIONS

SPONSORING ORGANIZATION: Pinery Christmas Trees

EVENT: Pumpkin Station

APPROVALS:

DATE OF EVENT: September 28, 2018 thru October 31, 2018

DEVELOPMENT SERVICES	YES [x]	NO []	SEE CONDITIONS []
RISK MANAGER	YES [x]	NO []	SEE CONDITIONS [x]
PUBLIC WORKS	YES [x]	ĪÌОИ	SEE CONDITIONS
FINANCE	YES [x]	Î Î ON	SEE CONDITIONS
FIRE	YES [x]	ііои	SEE CONDITIONS [x]
DOLLAR .		: :	

	[]		0200
FINANCE	YES [x]	NO []	SEE CONDITIONS []
FIRE	YES [x]	NO []	SEE CONDITIONS [x]
POLICE	YES [x]	NO []	SEE CONDITIONS [x]
CITY ATTORNEY	YES [x]	NO[]	SEE CONDITIONS [x]
COMMUNITY SERVICES	YES [x]	NO []	SEE CONDITIONS []
NEIGHBORHOOD SERVICES	YES [x]	П] ОИ	SEE CONDITIONS [x]

CONDITIONS OF APPROVAL:

DEVELOPMENT SERVICES (619) 336-4318

Building

Pumpkin Station submitted the same approved plan from last year - No concerns.

Planning

No comments

Engineering

No comments

POLICE DEPARTMENT

The police department has received this event annually with no previous reported incidents. This event is normally monitored by the Plaza Bonita Security. The police department will provide extra patrol as time permits.

CITY ATTORNEY

Approved on condition that Risk Manager approves.

COMMUNITY SERVICES

No involvement

NEIGHBORHOOD SERVICES

Neighborhood Notifications – Events are required to notify residents and/or businesses of the surrounding impacted areas by the event. The notice shall include the name of the event, name and phone number of the company/organization producing the event, the dates and times of the event (including set-up and breakdown) and a detailed description of how the residents and/or businesses may be affected, such as by street closures, "No Parking" signs being posted, music at the event, etc.

RISK MANAGER (619) 336-4370

Risk Management has reviewed the above captioned application for the issuance of a Temporary Use Permit. In as much as the event will held solely on private property there will be no additional insurance requirements necessary for the issuance of the permit.

It should be noted that the Hold Harmless and Indemnification Agreement were properly executed by the applicant at the time the Special Event Application was submitted.

PUBLIC WORKS (619)366-4580

No involvement

FINANCE

Pumpkin Station has a current business license. Finance/Business License has no further stipulations.

INSPECTION REQUIRED

\$500.00 FEE FOR CARNIVALS, \$400.00 FEE FOR CANOPIES PLUS AN ADDITIONAL \$200.00 INSPECTION FEE FOR INSPECTIONS OCCURING AFTER HOURS OR ON WEEKENDS OR HOLIDAYS

Stipulations required by the Fire Department for this event are as follows:

- 1) Access to the area to be maintained at all times.
- 2) Fire Department access into and through the booth areas are to be maintained at all times. Fire apparatus access roads shall have an unobstructed width of not less than 20 feet and an unobstructed vertical clearance of not less than 14 feet.
- 3) Participants on foot are to move immediately to the sidewalk upon approach of emergency vehicle(s).
- 4) Vehicles in roadway are to move immediately to the right upon approach of emergency vehicle(s).
- 5) Fire hydrants and fire department connections shall not be blocked or obstructed at any time.
- 6) Exit to be maintained in an obstructed manner at all times. Exit way to be clear of all obstructions.
- 7) Exits to be posted EXIT.
- 8) No open flames or smoking inside or adjacent to the tent/canopy. Signs to be posted NO SMOKING.
- 9) Extinguishers to be mounted in a visible location between 3½ to 5' from the floor to the top of the extinguisher. Maximum travel distance from an extinguisher shall not be more than 75 feet travel distance. All fire extinguishers to have a current State Fire Marshal Tag attached. Extinguishers shall be mounted in conspicuous area inside tent or canopy. Please see attached example.
- 12) Automobiles and other internal combustion engines shall be a minimum distance of twenty feet (20) from all tents and canopies.
- Any electrical power used is to be properly grounded and approved by the Building Official. Extension cords shall be used as "temporary Wiring" only.

- 14) Internal combustion power sources that may be used for "Light Towers" shall be of adequate capacity to permit uninterrupted operation during normal operating hours
- 15) Internal combustion power sources shall be isolated from contact with the public by either physical guards, fencing or an enclosure
- 16) If tents or canopies are used, tents having an area in excess of 200square feet and or canopies in excess of 400 square feet or multiple tents and or canopies placed together equaling or greater than the above stated areas, are to be used, they shall be flame-retardant treated with an approved State Fire Marshal seal attached. A ten feet separation distance must be maintained between tents and canopies. A permit from the Fire Department must be obtained. Cooking shall not be permitted under tents or canopies unless the tents or canopies meet "State Fire Marshal approval for cooking. Certificate of State Fire Marshal flame spread shall be provided to the National City Fire Department if applicable.

<u>Canopies:</u>

0 – 400 sf -	\$0
401 – 500 sf -	\$250.00
501 – 600 sf -	\$300.00
601 – 700 sf -	\$400.00

Tents:

- 17) <u>Bales of Straw and Corn Stalks shall meet the requirements for "Flame Propagation and Flame Spread". Proof of product used shall be furnished to the National City Fire Department prior to opening day. An inspection and test on materials used will be required prior to opening day.</u>
- 18) A fire safety inspection is to be conducted by the Fire Department prior to operations of the carnival to include all rides, cooking areas, game booths, etc.
- 18) Fees can only be waived by City Council.
- 19) First Aid will be provided by organization

Note: Organizer shall contact the National City Fire Department for cost associated with this event

The following page(s) contain the backup material for Agenda Item: Public Hearing and adoption of an Ordinance of the City Council of the City of National City amending National City Municipal Code Title 13, Section 13.22.060, Subsection "A" pertaining to public improvement requirements for single building permits. (Engi

CITY OF NATIONAL CITY, CALIFORNIA COUNCIL AGENDA STATEMENT

MEETING DATE: July 24, 2018 AGENDA ITEM NO.

ITEM TITLE:			
Public Hearing and adoption of an Ordinance of the City Cor National City Municipal Code Title 13, Section 13.22.060, So improvement requirements for single building permits.			ding
PREPARED BY: Luca Zappiello, Junior Engineer – Civil PHONE: 619-336-4360 EXPLANATION: See attached.	DEPARTMENT: APPROVED BY:	Engineering/Public	Works
FINANCIAL STATEMENT: ACCOUNT NO. N/A	APPROVED:		inance IIS
ENVIRONMENTAL REVIEW: N/A ORDINANCE: INTRODUCTION: FINAL ADOPTION:			
STAFF RECOMMENDATION:			
Provide second reading and adopt Ordinance of the City Co National City Municipal Code Title 13, Section 13.22.060, St BOARD / COMMISSION RECOMMENDATION:	41.00 to 1.00 to	f National City amen	ding
ATTACHMENTS:			
Explanation w/ Attachment (A) Ordinance			

Explanation

Title 13, Section 13.22.060, Subsection "A" of the City of National City Municipal Code defines public improvement requirements for single building permits, including the type and maximum dollar threshold of public improvements and exemptions.

Engineering staff recommends that the City Council amend Title 13, Section 13.22.060, Subsection "A" to expand the types of exemptions in an effort to reduce the financial burden on property owners and expedite the permit process for lower building valuation projects, such as minor additions to single-family dwellings (e.g. garages, patios, swimming pools). The proposed revisions are shown in Attachment "A".

On July 3, 2018 the City Council held a public hearing and introduction of the Ordinance. One National City business owner spoke in support of the item. The City Council did not direct any changes to the proposed Ordinance recommended by City staff.

Chapter 13.22 - STREET IMPROVEMENTS

Sections:

13.22.060 - Work required—<u>ExclusionsExemptions</u>—Conveyance of property.

- A. __1. Portland cement concrete curbs, gutters, drivewaysdriveway aprons, pedestrian curb ramps (in nonresidential areas only), sidewalks, and one-half width of local street permanent paving shall be constructed along all contiguous street frontages, including replacement of all damaged or broken public improvements, except where such damages have been determined by the city engineer to have been caused by city-owned street trees. Such work to be done shall not exceed, in costs, ten percent of the valuation of the building improvement permits as determined by the director of building and housing, official.
 - 2. Additional exemptions to the requirements of this Chapter, are as follows:
 - Single-building permits with a valuation, as estimated by the building official, of tenone hundred thousand dollars or less, and permits;
 - b. Permits for signs only, are excluded from the requirements of this chapter, as are permits;
 - c. Permits for new construction and/or tenant improvements that do not increase occupancy for persons or vehicles;
 - d. Permits for construction of accessory structures for single-family dwellings such as garages, swimming pools, decks or patios; and
 - a.e. Permits for work required to repair a property after an accident, natural disaster, or act of God. Repair in this instance is defined as that work necessary to return the property to its conditions it existed just prior to the accident, natural disaster, or act of God.
 - 23. In all cases, such building permit valuations shall be the sum of all such valuations shown on all building permits issued for that property within the immediately preceding twenty-four-month period, as determined by the director of building and housing official.

The following page(s) contain the backup material for Agenda Item: Resolution of the City Council of the City of National City calling and giving notice of the holding of a General Municipal Election to be held on Tuesday, November 6, 2018, for the purpose of submission of a ballot measure to the voters as required by th

The following page(s) contain the backup material for Agenda Item: Resolution of the City Council of the City of National City ordering the submission of a measure to the qualified voters of the City of National City at the General Municipal Election to be held on November 6, 2018, relating to approval of an Ordinance es

The following page(s) contain the backup material for Agenda Item: Resolution of the City Council of the City of National City requesting the Board of Supervisors of the County of San Diego to consolidate a General Municipal Election to be held on November 6, 2018 with the Statewide General Election to be held on that da

The following page(s) contain the backup material for Agenda Item: Resolution of the City Council of the City of National City authorizing the filing of an impartial analysis and written arguments relating to a measure to approve an Ordinance establishing a program of residential rent control, including creation of an in

The following page(s) contain the backup material for Agenda Item: Results of Investigations by Lozano Smith, Attorneys at Law. (City Attorney)

CITY OF NATIONAL CITY, CALIFORNIA COUNCIL AGENDA STATEMENT

MEETING DATE: July 24, 2018 AGENDA ITEM NO. ITEM TITLE: Results of Investigations by Lozano Smith, Attorneys at Law. PREPARED BY: **DEPARTMENT**: City Attorney Nicole Pedone APPROVED BY: PHONE: Ext. 4221 **EXPLANATION:** Oral report will be presented by attorney William P. Curley, III, of Lozano Smith. FINANCIAL STATEMENT: APPROVED: Finance ACCOUNT NO. APPROVED: MIS N/A **ENVIRONMENTAL REVIEW:** N/A ORDINANCE: INTRODUCTION: FINAL ADOPTION: STAFF RECOMMENDATION: Accept and file report. **BOARD / COMMISSION RECOMMENDATION:** N/A ATTACHMENTS:

The following page(s) contain the backup material for Agenda Item: Resolution of the Community Development Commission-Housing Authority of the City of National City authorizing the Executive Director to execute a Subordination Agreement with Wilmington Trust National Association, subordinating the Project Deed of Trust t

CITY OF NATIONAL CITY, CALIFORNIA COMMUNITY DEVELOPMENT COMMISSION-HOUSING AUTHORITY COUNCIL AGENDA STATEMENT

MEETING DATE:

July 24, 2018

AGENDA ITEM NO.

-	_		_		
IT	_	м	-		_
		VI.		_	

Resolution of the Community Development Commission-Housing Authority of the City of National City authorizing the Executive Director to execute a Subordination Agreement with Wilmington Trust National Association, subordinating the Project Deed of Trust that secures the Declaration of Covenants, Conditions and Restrictions (Tenant Restrictions) on Summercrest Apartments located at 2721 Plaza Boulevard in National City.

PREPARED BY: Carlos Aguirre, Housing & Econ. Dev. Mgr.

DEPARTMENT: Housing & Economic Dev.

APPROVED BY:

PHONE: 619 336-4391

Resolution

EXPLANATION:

Summercrest Apartments Associates, LP, a limited liability partnership organized under the laws of the State of Delaware ("Borrower") is purchasing and rehabilitating a 372-unit multifamily rental housing project ("Project") known as Summercrest Apartments located at 2721 Plaza Boulevard in National City. In 2001, the Community Development Commission ("CDC-HA") made a loan for \$500,000 from the HOME Investment Partnerships Program and the Low and Moderate Income Fund to assist in the substantial rehabilitation of the Project and the loan was paid in full to the CDC-HA in 2013. In consideration of receiving financial assistance, the CDC-HA restricted the affordability of 370 units through April 15, 2032 by recording a Declaration of Covenants, Conditions, and Restrictions ("Declaration") and securing the Declaration with a Project Deed of Trust ("Deed of Trust"). The Borrower desires to finance the Project with a new mortgage loan from Wilmington Trust National Association ("Lender"). In order to provide the loan, the Lender requires the subordination of the Project Deed of Trust that secures the Declaration. A condition of the CDC-HA executing the Subordination Agreement is having the Borrower execute an Assignment and Assumption of the Declaration.

Assignment and Assumption of the Declaration.		
FINANCIAL STATEMENT:	APPROVED:	Finance
ACCOUNT NO.	APPROVED:	MIS
There is no fiscal impact to the CDC-HA. Only affor Covenants, Conditions, and Restrictions are current ENVIRONMENTAL REVIEW: N/A	지수가 하는데 이번 경기를 지내려면 이렇게 하다면 되어 있다면 가지 않는데 되었다면 하게 하다고 있다면 하다면 되었다.	rded Declaration of
ORDINANCE: INTRODUCTION: FINAL ADO	PTION:	
STAFF RECOMMENDATION:		
Staff recommends the adoption of a resolution to ex	recute the Subordination Agreeme	ent.
BOARD / COMMISSION RECOMMENDATION:		
N/A	T.	
ATTACHMENTS:		
Subordination Agreement		

246 of 338

Freddie Mac Loan Number:
Property Name: Summercrest Apartments

SUBORDINATION AGREEMENT

GOVERNMENTAL ENTITY

(Direct Purchase of Tax-Exempt Loans) (Revised 1-29-2018)

THIS SUBORDIN	ATION AG	REEMENT ("A	greeme	ent") is ente	ered into	this day of
	, 20	, by and amo	ng WI	LMINGTO	N TRUS	T, NATIONAL
ASSOCIATION	("Senior	Mortgagee"),	and	COMMUN	ITY D	EVELOPMENT
COMMISSION O	F THE CIT	Y OF NATIONA	AL CIT	Y ("Subord	inate Mor	tgagee").

RECITALS

- A. **SUMMERCREST APARTMENT ASSOCIATES, LP**, a Delaware limited partnership ("**Borrower**") is the owner of certain land located in San Diego County, California, described in Exhibit A ("**Land**"). The Land is improved with a multifamily rental housing project ("**Improvements**").
- B. CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY ("Governmental Lender"), the original holder of the Senior Note, has made a loan to Borrower in the original principal amount of \$[67,450,000] ("Senior Loan") upon the terms and conditions of a Project Loan Agreement dated as of _______ ("Senior Loan Agreement") among Governmental Lender, Senior Mortgagee (in its capacity as Fiscal Agent under the Funding Loan Agreement (defined below)) and Borrower in connection with the Mortgaged Property. The Senior Loan is secured by a MULTIFAMILY DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING dated as of ______ ("Senior Mortgage") encumbering the Land, the Improvements and related personal and other property described and defined in the Senior Mortgage as the "Mortgaged Property."
- C. Subordinate Mortgagee is the holder of a Declaration of Covenants and Restrictions (Tenant Restrictions) ("Regulatory Agreement") dated December 18, 2001, executed by Plaza Manor Preservation, L.P. (Borrower's predecessor in title) and recorded on June 19, 2002 in the office of the County Recorder of San Diego County, California ("Recording Office") as Document Number 2002-0518422 (the "Regulatory Agreement"), which Regulatory Agreement is secured by that certain Deed of Trust encumbering the Mortgaged Property and recorded June 19, 2002 in the Recording Office as Instrument No. 2002-0518423 (the "Subordinate Mortgage")
- D. The Senior Mortgage will be recorded in the Recording Office prior to the recording of this Agreement.

- E. The Senior Note has been assigned by the Governmental Lender to Senior Mortgagee as security for the loan made by the Funding Lender to the Governmental Lender pursuant to the Funding Loan Agreement (the "Funding Loan"). The Senior Mortgage has been assigned by the Governmental Lender to Senior Mortgagee as security for the Funding Loan pursuant to an Assignment of Security Instrument dated as of the date hereof to be recorded in the Recording Office contemporaneously herewith.
- F. Pursuant to Section 17(c) of the Senior Mortgage and Section 6.03 of the Funding Loan Agreement dated as of _____ among Funding Lender, Governmental Lender and Senior Mortgagee (the "Funding Loan Agreement"), the Funding Lender has the right to direct all actions of the Senior Mortgagee with respect to the Senior Mortgage, the Mortgaged Property and the Senior Loan Agreement.
- G. The execution and delivery of this Agreement is a condition of Funding Lender's consenting to Subordinate Mortgagee's making of the Subordinate Loan and Borrower's granting of the Subordinate Mortgage.

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

- **1. Definitions.** The following terms, when used in this Agreement (including, as appropriate, when used in the above recitals), will have the following meanings.
 - (a) The terms "Condemnation," "Imposition Reserve Deposits," "Impositions," "Leases," "Rents" and "Restoration," as well as any term used in this Agreement and not otherwise defined in this Agreement, will have the meanings given to those terms in the Continuing Covenant Agreement dated as of between Funding Lender and Borrower ("Continuing Covenant Agreement").
 - (b) "Bankruptcy Proceeding" means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.
 - (c) "Borrower" means all persons or entities identified as "Borrower" in the first Recital of this Agreement, together with their successors and assigns, and any other person or entity who acquires title to the Mortgaged Property after the date of this Agreement; provided that the term "Borrower" will not include Senior Mortgagee or Funding Lender if Senior Mortgagee or Funding Lender acquires title to the Mortgaged Property.

- (d) "Casualty" means the occurrence of damage to or loss of all or any portion of the Mortgaged Property by fire or other casualty.
- (e) "Enforcement Action" means any of the following actions taken by or at the direction of Subordinate Mortgagee: the acceleration of all or any part of the Subordinate Indebtedness, the advertising of or commencement of any foreclosure or trustee's sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of Rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Mortgaged Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon any Subordinate Loan Documents, the exercising of any banker's lien or rights of set-off or recoupment, or the exercise of any other remedial action against Borrower, any other party liable for any of the Subordinate Indebtedness or obligated under any of the Subordinate Loan Documents, or the Mortgaged Property.
- (f) "Enforcement Action Notice" means a written Notice from Subordinate Mortgagee to Funding Lender, given following one or more Subordinate Mortgage Default(s) and the expiration of any Notice or cure periods provided for such Subordinate Mortgage Default(s) in the Subordinate Loan Documents, setting forth in reasonable detail the Subordinate Mortgage Default(s) and the Enforcement Actions proposed to be taken by Subordinate Mortgagee.
- (g) "Funding Lender" means Jones Lang LaSalle Multifamily, LLC, and any successor holder of the Governmental Note.
- (h) "Governmental Note" means the Multifamily Note delivered by the Governmental Lender evidencing the Funding Loan.
- (i) "Loss Proceeds" means all monies received or to be received under any insurance policy, from any condemning authority, or from any other source, as a result of any Condemnation or Casualty.
- (j) "Notice" is defined in Section 7(e).
- (k) "Regulatory Agreement" shall have the meaning assigned in the foregoing recitals.
- (l) "Senior Indebtedness" means the "Indebtedness" as defined in the Continuing Covenant Agreement.
- (m) "Senior Loan Documents" means the "Financing Documents" as defined in the Continuing Covenant Agreement.
- (n) "Senior Mortgage Default" means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of Notice or the passage of

- time, or both, would constitute, an "Event of Default" as defined in the Continuing Covenant Agreement.
- (o) "Senior Mortgagee" shall have the meaning assigned on page 1 hereof. When any other person or entity becomes the legal holder of the Senior Note, such other person or entity will automatically become Senior Mortgagee.
- (p) "Senior Note" means the Project Note as defined in the Continuing Covenant Agreement.
- (q) "Subordinate Indebtedness" means all sums evidenced or secured or guaranteed by, or otherwise due and payable to Subordinate Mortgagee pursuant to, the Subordinate Loan Documents.
- (r) "Subordinate Loan Documents" means the Subordinate Mortgage, the Regulatory Agreement and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness, as the same may be amended.
- (s) "Subordinate Mortgage Default" means any act, failure to act, event, condition, or occurrence which allows (but for any contrary provision of this Agreement), or which with the giving of Notice or the passage of time, or both, would allow (but for any contrary provision of this Agreement), Subordinate Mortgagee to take an Enforcement Action.
- (t) "Subordinate Mortgagee" means the person or entity named as such in the first paragraph of this Agreement and any other person or entity who becomes the legal holder of the Subordinate Mortgage after the date of this Agreement.

2. Subordination of Subordinate Indebtedness.

- (a) The Subordinate Indebtedness is and will at all times continue to be subject and subordinate in right of payment to the prior payment in full of the Senior Indebtedness.
- (b) Subordinate Mortgagee acknowledges that a Subordinate Mortgage Default constitutes a Senior Mortgage Default. Accordingly, upon the occurrence of a Subordinate Mortgage Default, Subordinate Mortgagee will be deemed to have actual knowledge of a Senior Mortgage Default.
- (c) If (i) Subordinate Mortgagee receives any payment, property, or asset of any kind or in any form on account of the Subordinate Indebtedness (including any proceeds from any Enforcement Action) after a Senior Mortgage Default of which Subordinate Mortgagee has actual knowledge (or is deemed to have actual knowledge as provided in 2(b) above) or has been given Notice, or (ii) Subordinate Mortgagee receives, voluntarily or involuntarily, by operation of law or otherwise, any payment, property, or asset in or in connection with any Bankruptcy Proceeding, such payment, property, or asset will be received and

held in trust for Funding Lender. Subordinate Mortgagee will promptly remit, in kind and properly endorsed as necessary, all such payments, properties, and assets to Funding Lender. Funding Lender will apply any payment, asset, or property so received from Subordinate Mortgagee to the Senior Indebtedness in such order, amount (with respect to any asset or property other than immediately available funds), and manner as Funding Lender determines in its sole and absolute discretion.

- (d) Without limiting the complete subordination of the Subordinate Indebtedness to the payment in full of the Senior Indebtedness, in any Bankruptcy Proceeding, upon any payment or distribution (whether in cash, property, securities, or otherwise) to creditors (i) the Senior Indebtedness will first be paid in full in cash before Subordinate Mortgagee will be entitled to receive any payment or other distribution on account of or in respect of the Subordinate Indebtedness, and (ii) until all of the Senior Indebtedness is paid in full in cash, any payment or distribution to which Subordinate Mortgagee would be entitled but for this Agreement (whether in cash, property, or other assets) will be made to Funding Lender.
- (e) The subordination of the Subordinate Indebtedness will continue if any payment under the Senior Loan Documents (whether by or on behalf of Borrower, as proceeds of security or enforcement of any right of set-off or otherwise) is for any reason repaid or returned to Borrower or its insolvent estate, or avoided, set aside or required to be paid to Borrower, a trustee, receiver or other similar party under any bankruptcy, insolvency, receivership or similar law. In such event, any or all of the Senior Indebtedness originally intended to be satisfied will be deemed to be reinstated and outstanding to the extent of any repayment, return, or other action, as if such payment on account of the Senior Indebtedness had not been made.

3. Subordination of Subordinate Loan Documents.

- (a) Each of the Subordinate Loan Documents is, and will at all times remain, subject and subordinate in all respects to the liens, terms, covenants, conditions, operations, and effects of each of the Senior Loan Documents.
- (b) The subordination of the Subordinate Loan Documents and of the Subordinate Indebtedness will apply and continue notwithstanding (i) the actual date and time of execution, delivery, recording, filing or perfection of each of the Senior Loan Documents and of each of the Subordinate Loan Documents, and (ii) the availability of any collateral to Senior Mortgagee or Funding Lender, including the availability of any collateral other than the Mortgaged Property.
- (c) By reason of, and without in any way limiting, the full subordination of the Subordinate Indebtedness and the Subordinate Loan Documents provided for in this Agreement, all rights and claims of Subordinate Mortgagee under the Subordinate Loan Documents in or to all or any portion of the Mortgaged Property are expressly subject and subordinate in all respects to the rights and

- claims of Senior Mortgagee or Funding Lender under the Senior Loan Documents in or to the Mortgaged Property.
- (d) If Subordinate Mortgagee, by indemnification, subrogation or otherwise, acquires any lien, estate, right or other interest in any of the Mortgaged Property, then that lien, estate, right or other interest will be fully subject and subordinate to the receipt by Senior Mortgagee or Funding Lender of payment in full of the Senior Indebtedness, and to the Senior Loan Documents, to the same extent as the Subordinate Indebtedness and the Subordinate Loan Documents are subordinate pursuant to this Agreement.

4. Additional Representations and Covenants.

- (a) Subordinate Mortgagee represents and warrants that each of the following is true:
 - (i) Subordinate Mortgagee is now the owner and holder of the Subordinate Loan Documents.
 - (ii) The Subordinate Loan Documents are now in full force and effect.
 - (iii) The Subordinate Loan Documents have not been modified or amended.
 - (iv) No Subordinate Mortgage Default has occurred.
 - (v) None of the rights of Subordinate Mortgagee under any of the Subordinate Loan Documents are subject to the rights of any third parties, by way of subrogation, indemnification or otherwise.
- (b) Without the prior written consent of Funding Lender in each instance, Subordinate Mortgagee will not do any of the following:
 - (i) Amend, modify, waive, extend, renew, or replace any provision of any of the Subordinate Loan Documents.
 - (ii) Pledge, assign, transfer, convey, or sell any interest in the Subordinate Indebtedness or any of the Subordinate Loan Documents.
 - (iii) Take any action which has the effect of increasing the Subordinate Indebtedness.
 - (iv) Appear in, defend or bring any action to protect Subordinate Mortgagee's interest in the Mortgaged Property.
 - (v) Take any action concerning environmental matters affecting the Mortgaged Property.
- (c) Subordinate Mortgagee will deliver to Funding Lender a copy of each Notice received or delivered by Subordinate Mortgagee pursuant to the Subordinate Loan

Documents or in connection with the Subordinate Indebtedness, simultaneously with Subordinate Mortgagee's delivery or receipt of such Notice. Funding Lender will deliver to Subordinate Mortgagee in the manner required in Section 5(b) a copy of each Notice of a Senior Mortgage Default delivered to Borrower by Funding Lender. Neither giving nor failing to give a Notice to Funding Lender or Subordinate Mortgagee pursuant to this Section 4(c) will affect the validity of any Notice given by Funding Lender or Subordinate Mortgagee to Borrower, as between Borrower and such of Funding Lender or Subordinate Mortgagee as provided the Notice to Borrower.

- (d) Without the prior written consent of Funding Lender in each instance, Subordinate Mortgagee will not commence, or join with any other creditor in commencing, any Bankruptcy Proceeding. In the event of a Bankruptcy Proceeding, Subordinate Mortgagee will not vote affirmatively in favor of any plan of reorganization or liquidation unless Funding Lender has also voted affirmatively in favor of such plan. In the event of any Bankruptcy Proceeding, Subordinate Mortgagee will not contest the continued accrual of interest on the Senior Indebtedness, in accordance with and at the rates specified in the Senior Loan Documents, both for periods before and for periods after the commencement of such Bankruptcy Proceedings.
- (e) Whenever the Subordinate Loan Documents give Subordinate Mortgagee approval or consent rights with respect to any matter, and a right of approval or consent with regard to the same or substantially the same matter is also granted to Senior Mortgagee or Funding Lender pursuant to the Senior Loan Documents or otherwise, Funding Lender's approval or consent or failure to approve or consent, as the case may be, will be binding on Subordinate Mortgagee. None of the other provisions of this Section 4 are intended to be in any way in limitation of the provisions of this Section 4(e).
- (f) All requirements pertaining to insurance under the Subordinate Loan Documents (including requirements relating to amounts and types of coverages, deductibles and special endorsements) will be deemed satisfied if Borrower complies with the insurance requirements under the Senior Loan Documents and of Funding Lender. All original policies of insurance required pursuant to the Senior Loan Documents will be held by Funding Lender. Nothing in this Section 4(f) will preclude Subordinate Mortgagee from requiring that it be named as a mortgagee and loss payee, as its interest may appear, under all policies of property damage insurance maintained by Borrower with respect to the Mortgaged Property, provided such action does not affect the priority of payment of Loss Proceeds, or that Subordinate Mortgagee be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Mortgaged Property.
- (g) In the event of a Condemnation or a Casualty, all of the following provisions will apply:

- (i) The rights of Subordinate Mortgagee (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Condemnation or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Condemnation or a Casualty, will be and remain subordinate in all respects to Senior Mortgagee's and Funding Lender's rights under the Senior Loan Documents with respect thereto, and Subordinate Mortgagee will be bound by any settlement or adjustment of a claim resulting from a Condemnation or a Casualty made by Funding Lender.
- (ii) All Loss Proceeds will be applied either to payment of the costs and expenses of Restoration or to payment on account of the Senior Indebtedness, as and in the manner determined by Funding Lender in its sole discretion.
- (iii) If Funding Lender applies or releases Loss Proceeds for the purposes of Restoration of the Mortgaged Property, then Subordinate Mortgagee will release for such purpose all of its right, title and interest, if any, in and to such Loss Proceeds. If Funding Lender holds Loss Proceeds, or monitors the disbursement thereof, Subordinate Mortgagee will not do so. Nothing contained in this Agreement will be deemed to require Funding Lender to act for or on behalf of Subordinate Mortgagee in connection with any Restoration or to hold or monitor any Loss Proceeds in trust for or otherwise on behalf of Subordinate Mortgagee, and all or any Loss Proceeds may be commingled with any funds of Funding Lender.
- (iv) If Funding Lender elects to apply Loss Proceeds to payment on account of the Senior Indebtedness, and if the application of such Loss Proceeds results in the payment in full of the entire Senior Indebtedness, any remaining Loss Proceeds held by Funding Lender will be paid to Subordinate Mortgagee unless another party has asserted a claim to the remaining Loss Proceeds.
- (h) Subordinate Mortgagee will enter into attornment and non-disturbance agreements with all tenants under commercial or retail Leases, if any, to whom Senior Mortgagee or Funding Lender has granted attornment and non-disturbance, on the same terms and conditions given by Senior Mortgagee or Funding Lender.
- (i) Except as provided in this Section 4(i), and regardless of any contrary provision in the Subordinate Loan Documents, Subordinate Mortgagee will not collect payments for the purpose of escrowing for any cost or expense related to the Mortgaged Property or for any portion of the Subordinate Indebtedness. However, if Funding Lender is not collecting escrow payments for one or more Impositions, Subordinate Mortgagee may collect escrow payments for such Impositions; provided that all payments so collected by Subordinate Mortgagee will be held in trust by Subordinate Mortgagee to be applied only to the payment of such Impositions.

- (j) Within 10 days after request by Funding Lender, Subordinate Mortgagee will furnish Funding Lender with a statement, duly acknowledged and certified setting forth the then-current amount and terms of the Subordinate Indebtedness, confirming that there exists no default under the Subordinate Loan Documents (or describing any default that does exist), and certifying to such other information with respect to the Subordinate Indebtedness as Funding Lender may request.
- (k) Senior Mortgagee or Funding Lender may amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provision of any of the Senior Loan Documents without the necessity of obtaining the consent of or providing Notice to Subordinate Mortgagee, and without affecting any of the provisions of this Agreement. Notwithstanding the foregoing, neither Senior Mortgagee nor Funding Lender may modify any provision of the Senior Loan Documents that increases the Senior Indebtedness, except for increases in the Senior Indebtedness that result from advances made by Senior Mortgagee or Funding Lender to protect the security or lien priority of Senior Mortgagee or Funding Lender under the Senior Loan Documents or to cure defaults under the Subordinate Loan Documents.

5. Default Under Loan Documents.

- For a period of 90 days following delivery to Funding Lender of an Enforcement (a) Action Notice, Funding Lender will have the right, but not the obligation, to cure any Subordinate Mortgage Default, provided that if such Subordinate Mortgage Default is a non-monetary default and is not capable of being cured within such 90-day period and Funding Lender has commenced and is diligently pursuing such cure to completion, Funding Lender will have such additional period of time as may be required to cure such Subordinate Mortgage Default or until such time, if ever, as Funding Lender (i) discontinues its pursuit of any cure and/or (ii) delivers to Subordinate Mortgagee Funding Lender's written consent to the Enforcement Action described in the Enforcement Action Notice. Neither Senior Mortgagee nor Funding Lender will be subrogated to the rights of Subordinate Mortgagee under the Subordinate Loan Documents by reason of Funding Lender having cured any Subordinate Mortgage Default. However, Subordinate Mortgagee acknowledges that all amounts advanced or expended by Funding Lender in accordance with the Senior Loan Documents or to cure a Subordinate Mortgage Default will be added to and become a part of the Senior Indebtedness and will be secured by the lien of the Senior Mortgage.
- (b) Funding Lender will deliver to Subordinate Mortgagee a copy of any Notice sent by Funding Lender to Borrower of a Senior Mortgage Default within 5 Business Days of sending such Notice to Borrower. Failure of Funding Lender to send Notice to Subordinate Mortgagee will not prevent the exercise of Funding Lender's rights and remedies under the Senior Loan Documents. Subordinate Mortgagee will have the right, but not the obligation, to cure any monetary Senior Mortgage Default within 30 days following the date of such Notice; provided, however, that Funding Lender will be entitled during such 30-day period to

continue to pursue its remedies under the Senior Loan Documents. Subordinate Mortgagee may, within 90 days after the date of the Notice, cure a non-monetary Senior Mortgage Default if during such 90-day period, Subordinate Mortgagee keeps current all payments required by the Senior Loan Documents. If such a non-monetary Senior Mortgage Default creates an unacceptable level of risk relative to the Mortgaged Property, or Senior Mortgagee's or Funding Lender's secured position relative to the Mortgaged Property, as determined by Funding Lender in its sole discretion, then during such 90-day period Funding Lender may exercise all available rights and remedies to protect and preserve the Mortgaged Property and the Rents, revenues and other proceeds from the Mortgaged Property. Subordinate Mortgagee will not be subrogated to the rights of Senior Mortgagee or Funding Lender under the Senior Loan Documents by reason of Subordinate Mortgagee having cured any Senior Mortgage Default. However, Senior Mortgagee and Funding Lender acknowledge that all amounts paid by Subordinate Mortgagee to Senior Mortgagee or Funding Lender to cure a Senior Mortgage Default will be deemed to have been advanced by Subordinate Mortgagee pursuant to, and will be secured by the lien of, the Subordinate Notwithstanding anything in this Section 5(b) to the contrary, Subordinate Mortgagee's right to cure any Senior Mortgage Default will terminate immediately upon the occurrence of any Bankruptcy Proceeding.

(c) In the event of a Subordinate Mortgage Default, Subordinate Mortgagee will not commence any Enforcement Action until 90 days after Subordinate Mortgagee has delivered to Funding Lender an Enforcement Action Notice with respect to such Enforcement Action, provided that during such 90-day period or such longer period as provided in Section 5(a), Subordinate Mortgagee will be entitled to seek specific performance to enforce covenants and agreements of Borrower relating to income, rent, or affordability restrictions contained in the Regulatory Agreement, subject to Funding Lender's right to cure a Subordinate Mortgage Default set forth in Section 5(a). Subordinate Mortgagee may not commence any other Enforcement Action, including any foreclosure action under the Subordinate Loan Documents, until the earlier of (i) the expiration of such 90-day period or such longer period as provided in Section 5(a), or (ii) the delivery by Funding Lender to Subordinate Mortgagee of Funding Lender's written consent to such Enforcement Action by Subordinate Mortgagee. Subordinate Mortgagee acknowledges that Funding Lender may grant or refuse consent to Subordinate Mortgagee's Enforcement Action in Funding Lender's sole and absolute discretion. At the expiration of such 90-day period or such longer period as provided in Section 5(a) and, subject to Funding Lender's right to cure set forth in Section 5(a), Subordinate Mortgagee may commence any Enforcement Action. Any Enforcement Action on the part of Subordinate Mortgagee will be subject to the provisions of this Agreement. Subordinate Mortgagee acknowledges that the provisions of this Section 5(c) are fair and reasonable under the circumstances, that Subordinate Mortgagee has received a substantial benefit from Funding Lender having granted its consent to the Subordinate Mortgage, and that Funding

- Lender would not have granted such consent without the inclusion of these provisions in this Agreement.
- (d) Senior Mortgagee or Funding Lender may pursue all rights and remedies available to it under the Senior Loan Documents, at law, or in equity, regardless of any Enforcement Action Notice or Enforcement Action by Subordinate Mortgagee. No action or failure to act on the part of Senior Mortgagee or Funding Lender in the event of a Subordinate Mortgage Default or commencement of an Enforcement Action will constitute a waiver on the part of Senior Mortgagee or Funding Lender of any provision of the Senior Loan Documents or this Agreement.
- (e) If the Enforcement Action taken by Subordinate Mortgagee is the appointment of a receiver for any of the Mortgaged Property, all of the Rents, issues, profits and proceeds collected by the receiver will be paid and applied by the receiver solely to and for the benefit of Senior Mortgagee or Funding Lender until the Senior Indebtedness will have been paid in full.
- (f) Subordinate Mortgagee consents to and authorizes the release by Senior Mortgagee or Funding Lender of all or any portion of the Mortgaged Property from the lien, operation, and effect of the Senior Loan Documents. Subordinate Mortgagee waives to the fullest extent permitted by law, all equitable or other rights it may have (i) in connection with the release of all or any portion of the Mortgaged Property, (ii) to require the separate sale of any portion of the Mortgaged Property, (iii) to require Senior Mortgagee or Funding Lender to exhaust its remedies against all or any portion of the Mortgaged Property or any combination of portions of the Mortgaged Property or any other collateral for the Senior Indebtedness, or (iv) to require Senior Mortgagee or Funding Lender to proceed against Borrower, any other party that may be liable for any of the Senior Indebtedness (including any general partner of Borrower if Borrower is a partnership), all or any portion of the Mortgaged Property or combination of portions of the Mortgaged Property or any other collateral, before proceeding against all or such portions or combination of portions of the Mortgaged Property as Senior Mortgagee or Funding Lender determines. Subordinate Mortgagee waives to the fullest extent permitted by law any and all benefits under California Civil Code Sections 2845, 2849 and 2850.] Subordinate Mortgagee consents to and authorizes, at the option of Senior Mortgagee or Funding Lender, the sale, either separately or together, of all or any portion of the Mortgaged Property. Subordinate Mortgagee acknowledges that without Notice to Subordinate Mortgagee and without affecting any of the provisions of this Agreement, Senior Mortgagee or Funding Lender may (i) extend the time for or waive any payment or performance under the Senior Loan Documents; (ii) modify or amend in any respect any provision of the Senior Loan Documents; and (iii) modify, exchange, surrender, release, and otherwise deal with any additional collateral for the Senior Indebtedness.

- (g) If any party other than Borrower (including Senior Mortgagee or Funding Lender) acquires title to any of the Mortgaged Property pursuant to a foreclosure of, or trustee's sale or other exercise of any power of sale under, the Senior Mortgage conducted in accordance with applicable law, the lien, operation, and effect of the Subordinate Mortgage and other Subordinate Loan Documents automatically will terminate with respect to such Mortgaged Property.
- **Refinancing.** Subordinate Mortgagee agrees that its agreement to subordinate hereunder will extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Indebtedness (including reasonable and necessary costs associated with the closing and/or the refinancing, and any reasonable increase in proceeds for rehabilitation in the context of a preservation transaction). All terms and covenants of this Agreement will inure to the benefit of any holder of any such refinanced debt, and all references to the Senior Loan Documents and Senior Mortgagee will mean, respectively, the refinance loan documents and the holder of such refinanced debt.

7. Miscellaneous Provisions.

- (a) This Agreement represents the entire understanding and agreement between the parties with regard to the matters addressed herein, and will supersede and cancel any prior agreements with regard to such matters.
- (b) If there is any conflict or inconsistency between the terms of the Subordinate Loan Documents and the terms of this Agreement, then the terms of this Agreement will control.
- (c) This Agreement will be binding upon and will inure to the benefit of the respective legal successors and permitted assigns of the parties to this Agreement. No other party will be entitled to any benefits under this Agreement, whether as a third-party beneficiary or otherwise.
- (d) If any one or more of the provisions contained in this Agreement, or any application of any such provisions, is invalid, illegal, or unenforceable in any respect, the validity, legality, enforceability, and application of the remaining provisions contained in this Agreement will not in any way be affected or impaired.
- (e) Each notice, request, demand, consent, approval or other communication (collectively, "Notices," and singly, a "Notice") which is required or permitted to be given pursuant to this Agreement will be in writing and will be deemed to have been duly and sufficiently given if (i) personally delivered with proof of delivery (any Notice so delivered will be deemed to have been received at the time so delivered), or (ii) sent by a national overnight courier service (such as FedEx) designating earliest available delivery (any Notice so delivered will be deemed to have been received on the next Business Day following receipt by the courier), or (iii) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal

Service (any Notice so sent will be deemed to have been received on the date of delivery as confirmed by the return receipt), addressed to the respective parties as follows:

(i) Notices intended for Senior Mortgagee will be addressed to:

[Name] [Address]

Attention: Facsimile:

Telephone:

(ii) Notices intended for Subordinate Mortgagee will be addressed to:

[Name]

[Address]

Attention:

Facsimile:

Telephone:

(iii) Notices intended for Funding Lender will be addressed to:

[Name]

[Address]

Attention:

Facsimile:

Telephone:

Any party, by Notice given pursuant to this Section, may change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its Notices, but Notice of a change of address will only be effective upon receipt. Neither party will refuse or reject delivery of any Notice given in accordance with this Section.

- (f) Upon Notice from Funding Lender, Subordinate Mortgagee will execute and deliver such additional instruments and documents, and will take such actions, as are required by Funding Lender in order to further evidence or implement the provisions and intent of this Agreement.
- (g) This Agreement will be governed by the laws of the State in which the Land is located.
- (h) Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations under this Agreement.

- (i) No failure or delay on the part of any party to this Agreement in exercising any right, power, or remedy under this Agreement will operate as a waiver of such right, power, or remedy, nor will any single or partial exercise of any such right, power or remedy preclude any other or further exercise of such right, power, or remedy or the exercise of any other right, power or remedy under this Agreement.
- (j) Each party to this Agreement acknowledges that if any party fails to comply with its obligations under this Agreement, the other parties will have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.
- (k) This Agreement shall inure to the benefit of any subsequent holder of the Senior Indebtedness.
- (l) This Agreement may be amended, changed, modified, altered or terminated only by a written instrument or written instruments signed by the parties to this Agreement or their successors or assigns.
- (m) This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.
- (n) The term of this Agreement will commence on the date of this Agreement and will continue until the earliest to occur of the following events: (i) the payment of all of the Senior Indebtedness; provided that this Agreement will be reinstated in the event any payment on account of the Senior Indebtedness is avoided, set aside, rescinded or repaid by Senior Mortgagee or Funding Lender as described in Section 2(e) of this Agreement, (ii) the payment of all of the Subordinate Indebtedness other than by reason of payments which Subordinate Mortgagee is obligated to remit to Senior Mortgagee or Funding Lender pursuant to this Agreement, (iii) the acquisition by Senior Mortgagee or Funding Lender or by a third party purchaser of title to the Mortgaged Property pursuant to a foreclosure of, deed in lieu of foreclosure, or trustee's sale or other exercise of a power of sale or similar disposition under the Senior Mortgage; or (iv) with the prior written consent of Funding Lender, without limiting the provisions of Section 5(d), the acquisition by Subordinate Mortgagee of title to the Mortgaged Property subject to the Senior Mortgage pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale under) the Subordinate Mortgage.
- (o) This Agreement does not constitute an approval by Senior Mortgagee or Funding Lender of the terms of the Subordinate Loan Documents.
- (p) Nothing in this Agreement or in any of the Senior Loan Documents or Subordinate Loan Documents will be deemed to constitute Senior Mortgagee or Funding Lender as a joint venturer or partner of Subordinate Mortgagee.

- (q) Nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by Subordinate Mortgagee of its governmental powers (including police, regulatory and taxing powers) with respect to Borrower or the Mortgaged Property to the same extent as if it were not a party to this Agreement or the transactions contemplated by this Agreement.
- (r) Notwithstanding anything herein to the contrary, pursuant to Section 17(c) of the Senior Mortgage and Section 6.03 of the Funding Loan Agreement, all acts, consents, approvals and undertakings of Senior Mortgagee hereunder shall be solely at the written direction of the Funding Lender. The parties acknowledge and agree that Funding Lender is a third party beneficiary of this Agreement, with full rights as such.

[Signature and acknowledgment pages follow]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

year first above written.		
	SENIOR MORTGAGEE:	
	WILMINGTON TRUST NATIONAL ASSOCIATION	٩L
	By: Name: Title:	
[Notary Block for recordation]	SUBORDINATE MORTGAGEE:	
	SUBORDINATE MORTGAGEE.	
	COMMUNITY DEVELOPMEN COMMISSION OF THE CITY O NATIONAL CITY	TV P
	By: Name: Title:	
[Notary Block for recordation]		

CONSENT OF BORROWER

Borrower acknowledges receipt, 2018, by an	of a nd am	copy of this Subordination Agreement, dated nong WILMINGTON TRUST, NATIONAL
		EVELOPMENT COMMISSION OF THE CITY e agreement of the parties set forth in this Agreement.
		MERCREST APARTMENT ASSOCIATES, LP, aware limited partnership
	By:	Summercrest GP, LLC, a Delaware limited liability company, its Co-Managing General Partner
		By: DeSola Capital Group, LLC, a Washington limited liability company, its Sole Managing Member
		By: The Gary C. Grant Trust, a California Trust, dated November 26, 2002, its Sole Member By:
		Gary C. Grant, Trustee
	By:	AOF Summercrest, LLC, a California limited liability company, its Managing General Partner
		By: AOF/Pacific Affordable Housing Corp., a California nonprofit public benefit corporation, its Sole Member
	¥	By: Name: Title:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)		
COUNTY OF) ss.)		
On	_ before me,			, Notary
Public, personally appeared proved to me on the basis of satis subscribed to the within instrume in his/her/their authorized capacit the person(s), or the entity upon b	factory evidence ent and acknowled ty(ies), and that b	to be the per dged to me the y his/her/the	nat he/she/they e ir signature(s) o	executed the same on the instrument
I certify under PENALTY OF I foregoing paragraph is true and c		the laws of	the State of C	California that the
WITNESS my hand and o	official seal.			
Notary Public		(Seal)		

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)	
COUNTY OF) ss.)	
On before	re me.	, Notary
Public, personally appeared		, who
proved to me on the basis of satisfactor subscribed to the within instrument and in his/her/their authorized capacity(ies) the person(s), or the entity upon behalf	I acknowledged to me that , and that by his/her/their	t he/she/they executed the same signature(s) on the instrument
I certify under PENALTY OF PERJU foregoing paragraph is true and correct		he State of California that the
WITNESS my hand and officia	l seal.	
Notary Public	(Seal)	

EXHIBIT A

LEGAL DESCRIPTION

The land referred to in this Commitment is situated in the City of National City, County of San Diego, State of California, and is described as follows:

PARCEL A:

THAT PORTION OF THE EAST HALF OF THE NORTHWEST QUARTER OF QUARTER SECTION 106 OF RANCHO DE LA NACION, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 166 ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SAID QUARTER SECTION IN THE CENTER LINE OF A PUBLIC STREET, 80.00 FEET WIDE, RUNNING THENCE SOUTH 71°11'05" WEST (RECORD SOUTH 71° WEST) ALONG THE NORTHERLY LINE OF SAID QUARTER SECTION A DISTANCE OF 665.03 FEET (RECORD 660.00 FEET MORE OR LESS) TO THE NORTHEAST CORNER OF THE LAND DESCRIBED IN DEED TO HERMAN TO CROW RECORDED IN BOOK 498, PAGE 474 OF DEEDS, SAID POINT BEING ALSO THE NORTHWEST CORNER OF THE SAID EAST HALF OF THE NORTHWEST QUARTER OF SECTION 106; THENCE SOUTHERLY ALONG THE WESTERLY LINE OF SAID EASTERLY HALF OF THE NORTHWEST QUARTER OF QUARTER SECTION 106, SOUTH 18°36'22" EAST (RECORD SOUTH 19° EAST), 440.00 FEET TO THE SOUTHERLY LINE OF THE NORTHERLY 440.00 FEET OF SAID QUARTER SECTION, BEING ALSO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID WESTERLY LINE SOUTH 18°36'22" EAST (RECORD SOUTH 19° EAST), 701.30 FEET TO AND ALONG THE EASTERLY BOUNDARY OF THE LAND DESCRIBED IN DEED TO O.A. STAUDE, RECORDED IN BOOK 714, PAGE 411 OF DEEDS TO THE NORTHERLY LINE OF THE SOUTHERLY

179.00 FEET OF SAID NORTHWEST QUARTER; THENCE EASTERLY ALONG SAID NORTHERLY LINE NORTH 71°20′35" EAST, 663.37 FEET TO A POINT ON THE EASTERLY LINE OF SAID NORTHWEST QUARTER OF QUARTER SECTION 106; THENCE NORTHERLY ALONG SAID EASTERLY LINE NORTH 18°31′23" WEST (RECORD NORTH 19° WEST), 208.95 FEET; THENCE LEAVING SAID LINE SOUTH 71°16′22" WEST, 30.00 FEET; THENCE NORTHERLY PARALLEL WITH THE EASTERLY LINE OF SAID NORTHWEST QUARTER OF QUARTER SECTION 106, NORTH 18°31′23" WEST, 302.50 FEET; THENCE NORTH 71°16′22" EAST, 30.00 FEET TO A POINT ON THE EASTERLY LINE OF SAID NORTHWEST QUARTER OF QUARTER SECTION 106; THENCE NORTHERLY ALONG SAID LINE NORTH 18°31′23" WEST, 191.68 FEET TO THE SOUTHERLY LINE OF THE NORTHERLY 440.00 FEET OF SAID QUARTER SECTION; THENCE SOUTH 71°11′05" WEST, 664.39 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL B:

THAT PORTION OF THE EAST HALF OF THE NORTHWEST QUARTER OF QUARTER SECTION 106 OF RANCHO DE LA NACION, IN THE CITY OF NATIONAL CITY,

COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY MORRILL NO. 166, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MAY 11, 1869, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 12 OF TRUESDELL PLACE, ACCORDING TO MAP THEREOF NO. 1735, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, SEPTEMBER 05, 1922; THENCE SOUTH 18°29'09" EAST ALONG THE SOUTHWESTERLY LINE OF SAID MAP NO. 1735, TO AND ALONG THE SOUTHWESTERLY LINE OF ORCHARD MANOR, ACCORDING TO MAP THEREOF NO. 3627, FILED IN THE OFFICE OF SAID COUNTY RECORDER, APRIL 22, 1957, A DISTANCE OF 302.50 FEET TO INTERSECTION WITH THE SOUTHWESTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF 11TH STREET AS SHOWN ON SAID MAP NO. 3627; THENCE SOUTH 71°18'36" WEST ALONG SAID PROLONGATION 30.00 FEET; THENCE NORTH 18°29'09" WEST PARALLEL WITH SAID SOUTHWESTERLY LINES OF MAPS NO'S. 3627 AND 1735, RESPECTIVELY, 302.50 FEET TO A POINT OF INTERSECTION WITH THE SOUTHWESTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF 10TH STREET AS SHOWN ON SAID MAP NO. 1735; THENCE NORTH 71°18'36" EAST ALONG SAID

PROLONGATION, 30.00 FEET TO THE POINT OF BEGINNING.

PORTION OF PUBLIC STREET, VACATED, KNOWN AS ARCADIA PLACE.

APN: 558-010-45-00

The following page(s) contain the backup material for Agenda Item: Report to the City Council of the City of National City on the status of finalizing Maintenance and Operating Agreements with the National City Historical Society, National City Living History Farm Preserve, Inc. and the San Diego Electric Railway Associa

CITY OF NATIONAL CITY, CALIFORNIA COUNCIL AGENDA STATEMENT

MEETING DATE: July 24, 2018 AGENDA ITEM NO.

July 24, 2016		MODITOR HEIM HO.
ITEM TITLE: Report to the City Council of the City of National City of Operating Agreements with the National City Historica Preserve, Inc. and the San Diego Electric Railway Association.	al Society, National C	City Living History Farm
PREPARED BY: Gregory Rose, Property Agent PHONE: 619.336.4266 EXPLANATION: See Attachment No. 1.	DEPARTMENT: APPROVED BY:	Housing & Economic Development
	APPROVED:	Finance
FINANCIAL STATEMENT: ACCOUNT NO. n/a		MIS
ENVIRONMENTAL REVIEW: n/a	APPROVED:	
ORDINANCE: INTRODUCTION: FINAL ADOPTI	ON:	
STAFF RECOMMENDATION:		
n/a		
BOARD / COMMISSION RECOMMENDATION:		

ATTACHMENTS:

n/a

- 1. Background Report
- 2. National City Depot Draft Maintenance and Operating Agreement
- 3. Stein Family Farm Draft Maintenance and Operating Agreement
- 4. Frank Kimball House Draft Maintenance and Operating Agreement

Background Report

As a result of legislation (ABX1 26) signed by Governor Brown in June 2011, all redevelopment agencies throughout California were dissolved as of February 1, 2012 and successor agencies were established to wind down the affairs of the former redevelopment agencies. City of National City accepted the transfer of certain Real Property from the Successor Agency to the Community Development Commission as the National City Redevelopment Agency on May 17, 2016. These properties are to be retained by the City of National City for governmental use and future development.

Three historically significant properties were transferred to the City and were retained for government use as historical sites and museums available to the public. They are the National City Depot, the Frank Kimball House and the Stein Family Farm. The existing leases and agreements were negotiated with the former Community Development Commission. In an attempt to update agreements with all the City-owned historic site operators ("Site Operators") in National City to include adequate insurance provisions and consistent operating standards, new Maintenance and Operating Agreements ("M&O Agreements") for the Site Operators were offered. The new M&O Agreements would also aid their fundraising efforts by allowing the Site Operators to hold fundraising or third party events with the City's consent. The M&O Agreements also requires reporting to the City of their activities.

The draft M&O Agreements were sent out to the Site Operators on April 17, 2018. The Site Operators were asked to make edits and comments on the document and send the draft M&O Agreements back to the City. The City would review their edits and comments, then set up a meeting to discuss the edits & comments and negotiate the M&O Agreements. On June 6th a reminder email was sent out asking to get the draft M&O Agreements back to the City by the end of June.

Status of the Draft Maintenance Agreements with Historic Site Operators

San Diego Electric Railway Association, Inc., ("Depot"), is the operator of the National City Depot. The Depot currently has an existing lease that expires in 2023.

The major differences between the draft M&O Agreement and existing lease:

- Renegotiate terms to a 5 year lease with three additional 5 year options.
- Require a detailed accounting of activities
- Allow the Depot to serve alcohol at their onsite fundraisers
- Allow the Depot to rent to third parties to use the Depot for events as a way to raise funds.
- Transfer more maintenance responsibilities to the Depot.

History of communication presenting the draft M&O Agreement:

- On May 9th the Depot came in to City Hall for a meeting to ask question they had about the M&O Agreement.

 On June 19th the City received the Depot's M&O Agreement with their edits and comments. The edits and comments are currently being reviewed by the City Attorney's office. A meeting will be set up with the Depot to finalize the M&O Agreement.

National City Living History Farm Preserve, Inc., ("Stein Farm"), is the operator of the Stein Farm. The prior lease with Stein Farm has expired in 2002 and is currently on holdover.

The major differences between the draft M&O Agreement and holdover lease:

- Set terms of 5 years lease with three additional 5 year options
- Require a detailed accounting of activities
- Allow Stein Farm to serve alcohol at their onsite fundraisers
- Allow Stein Farm to rent to third parties to use the farm for events as a way to raise funds.
- Transfer more maintenance responsibilities to Stein Farm.

History of communication presenting the draft M&O Agreement:

- On May 29th Stein Farm has informed the City orally that they have not had an opportunity to review the M&O Agreement. Currently the Stein Farm is moving and rehabilitating a Victorian home on the farm.
- On June 20th an email follow-up was sent and the reply was that they were still too busy with the house move to review it as of June 20th.

National City Historical Society, ("Historical Society"), is the operator of the Frank Kimball House. The Historical Society currently has an existing lease that expires in 2023.

The major differences between the draft M&O Agreement and existing lease:

- Renegotiate terms to a 5 year lease with three additional 5 year options.
- Allow the Historical Society to serve alcohol at their onsite fundraisers.
- Allow a member of the Historical Society to occupy the second floor of the Kimball House as a caretaker. The current lease states that the Historical Society shall have no access to the second floor.
- Require a detailed accounting of activities.
- Transfer more maintenance responsibilities to the Historical Society.

History of communication presenting the draft M&O Agreement:

- On April 18th the City was notified that the Historical Society wanted to keep their existing lease.
- On April 24th the City was notified that the Historical Society wanted 10 copies of the draft M&O Agreement to take to their board.
- On May 15th the Historical Society met with city staff to discuss.
- On June 7th the City was notified that the Historical Society wanted to keep their existing lease.

Next Steps

On July 12, 2018, staff provided the following timeline setting the dates to provide final comments on the M&O Agreements to present to the City Council for consideration.

<u>Task</u>	<u>Deadline</u>
Get edits and comments back from the Site Operators	8/1/2018
Finish City review of edits and comments	8/14/2018
Meet with Site Operators to finalize M&O Agreements	8/28/2018
Present M&O Agreements to City Council for consideration	9/18/2018



MAINTENANCE AND OPERATING AGREEMENT

by and between

CITY OF NATIONAL CITY

and

SAN DIEGO ELECTRIC RAILWAY ASSOCIATION, INC.

Dated as of _______, 2018

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MAINTENANCE AND OPERATING AGREEMENT BY AND BETWEEN THE CITY OF NATIONAL CITY AND

SAN DIEGO ELECTRIC RAILWAY ASSOCIATION

This Maintenance and Operating Agreement (the "Agreement") is entered into as of _______, 2018, by and between the CITY OF NATIONAL CITY, a municipal corporation (the "CITY"), and SAN DIEGO ELECTRIC RAILWAY ASSOCIATION, a California non-profit corporation ("SDERA").

RECITALS

- A. WHEREAS, the CITY owns the improved real property commonly known as the National City Depot, located at 922 West 23rd Street, National City, California (the "Property"). The improvements on the Property are sometimes referred to as the "Railroad Depot" building. A legal description of the Property is attached hereto as Exhibit "A" and incorporated herein by reference.
- B. WHEREAS Article 11, Section 7 of the California Constitution empowers the CITY to provide for the health and welfare of its residents.
- C. WHEREAS, the CITY desires to enter into a Maintenance & Operating Agreement due to the special services to be performed under this Agreement for the City and to facilitate a more collaborative relationship between the CITY and the operator of the Premises.
- D. WHEREAS, one of the goals of the CITY's General Plan is to develop educational experiences capable of promoting the cultural heritage of the city and lifting the spirits of residents and visitors to National City.
- E. WHEREAS, the CITY desires the services of an organization to maintain and operate the Property in a manner beneficial to the public.
- F. WHEREAS, the CITY has further determined that SDERA is skilled in providing educational experiences capable of lifting the spirits of residents and visitors to National City.
- G. WHEREAS, the CITY wishes to have SDERA maintain and operate the Property, for the community's benefit, as an educational rail museum that highlights the historic role railroad activities played in the development of the CITY and region. SDERA is willing to operate and maintain the Property for such a purpose.

NOW, THEREFORE, in consideration of the foregoing facts, and in consideration of the promises and covenants hereinafter set forth, the parties agree as follows:

ARTICLE 1 TERM OF AGREEMENT

- 1.1 <u>Term.</u> The term of this Agreement shall be sixty (60) months, commencing October 1, 2018 (the "Commencement Date") and expiring on October 31, 2023.
- 1.2 Option to Extend Term. If SDERA is not in default of any provision of this Agreement upon the expiration of the term described in Article 1.1, the City Manager or designee may extend the term for up to three (3) additional sixty (60) month periods. The initial sixty month term, and any extension pursuant to this Article 1.2, shall collectively be referred to hereafter as the "Term."

ARTICLE 2 THE PROPERTY

- 2.1 <u>License for Use of Property</u>. The CITY grants SDERA a revocable license to enter and operate the Property for the purpose of operating a public educational rail museum that benefits the residents and visitors of National City. SDERA's revocable license is subject to the covenants and requirements of this Agreement as of the Commencement Date.
- 2.2 <u>Ownership of Personal Property and Improvements</u>. The rights and obligations of the parties regarding the ownership of personal property and improvements on the Property shall be as follows:
 - 2.2.1 Ownership of Personal Property. All improvements existing on the Property (Improvements), together with all fixtures permanently attached to the Property (Fixtures), as of the Commencement Date shall remain the property of the CITY during the Term. SDERA shall not remove any Improvements or Fixtures from the Property and shall also not waste, destroy, or modify any Improvements or Fixtures on the Property, except as permitted by this Agreement.
 - 2.2.2 Ownership of Improvements and Equipment. All improvements made to the property by SDERA shall become the property of the CITY.

ARTICLE 3 PERMITTED USE

- 3.1 <u>Purpose</u>. The parties intend that the operation of the Premises by SDERA will provide (a) an opportunity for the community to learn about the historic role railroad activities played in the development of the city and region, and (2) educational experiences for the children of National City.
- 3.2 Operations Plan. SDERA must submit a written operations plan to the CITY that addresses all aspects of maintaining and operating the Property. This written operations plan must include, but will not be limited to, descriptions of the following:

- 1) Hours of operation;
- 2) Proposed activities or facilities available to the public;
- 3) The number of employees, volunteers or long term caretakers on staff;
- 4) Visitor safety and property security;
- 5) Capital improvements;
- 6) Property, building, equipment, and preservation of grounds;
- 7) Sources of funding, fundraising plan;
- 8) Expected expenses;
- 9) Community outreach;
- 10) Parking;
- 11) Lighting;
- 12) Handicap accommodations;
- 13) Facility rentals to third parties;
- 14) Goals for the next year and next three years thereafter.
- 3.3 <u>Hours of Operation</u>. SDERA shall open the Property to the general public Saturday and Sunday from 10 a.m. to 4 p.m. and also for public special events scheduled in advance of the event. SDERA shall post, in a location visible from West 23rd Street, the Property's hours of operation.
- 3.4 <u>Service Fees.</u> SDERA shall not provide any programs and services for profit. However, SDERA may charge user fees for classes and programs offered to school groups and the community to offset costs incurred by SDERA in its maintenance and operation of the Property. Any fees charged under this Article 3.4 must be approved by the City Manager or designee. The public shall pay no fee to gain access to the Property during those hours of operation listed in this Article 3.
- 3.5 Reporting by SDERA. SDERA shall provide annual reports to the CITY that provide Statistical Information (defined below) for the immediately preceding year. Each annual report shall contain, at a minimum, the total number of: (a) National City residents who participated in SDERA's Projects; (b) participants and volunteers who participated in SDERA's Projects; (c) events and programs coordinated; (d) and capital projects completed. The annual reports shall also include reports on SDERA's operating and maintenance plans, long-term and short-term goals, and any other pertinent statistics. The information required to appear in the annual reports by this Article 3.5 will be referred to as "Statistical Information." Each annual report will include all previous years' worth of Statistical Information, if any. SDERA will deliver the annual report to the CITY at a mutually agreeable date and time.
- Annual Budget. SDERA shall provide the CITY with a proposed budget for SDERA's estimated maintenance and operating expenses for the Property by July 1st of each year during the Term. SDERA shall provide to the CITY an audited financial report and tax return, forty-five (45) days following June 30th of each year during the Term.
- 3.7 <u>Volunteer Management</u>. SDERA may utilize volunteers to operate the Property, and in providing the Projects required by this Agreement. SDERA is responsible for recruiting,

training, and managing all volunteers on the Property. Volunteers are considered the responsibility of SDERA for the purpose of workers compensation or general liability.

- 3.8 <u>Alcohol Use</u>. SDERA, or third parties with permission from SDERA, may, hold events on the Property where alcoholic beverages are served. Alcoholic beverages shall be served subject to the following requirements:
 - Alcohol will not be served during youth programming under any circumstances.
 - Alcohol will be served in limited areas of the Property, designated by SDERA in advance, and approved by the City Manager or designee.
 - Alcoholic beverages must be served by a licensed bartender, with a copy of the bartender's license on the Property.
 - The event host must obtain approval from the state Department of Alcoholic Beverage Control to serve alcohol.
 - The event host is responsible for all guest behavior during and following the service of alcohol.
 - "Last call" for service of alcohol shall be at least thirty (30) minutes prior to the scheduled end of the event.

When third parties (with permission from SDERA) serve alcoholic beverages, the following additional requirements shall apply:

- The third party shall provide the CITY proof of liability insurance acceptable to the City's Risk Manager.
- The third party shall provide two licensed security guard for every 100 guests registered to attend the event.
- SDERA shall reserve the authority to immediately terminate an event if SDERA determines, in its sole discretion, the third party has not complied with any requirement of this Article 3.8.
- SDERA shall provide the CITY a copy of their third party rental agreement template for approval.
- 3.9 <u>Consideration</u>. SDERA's payment of \$1.00 to the City, in addition to its' performance under the remainder of this Agreement, shall serve as the sole consideration due the CITY for SDERA's license to use and operate the Premises.
- 3.10 <u>Compliance with Laws.</u> SDERA, at its sole expense, shall procure, maintain, and hold available for the CITY's inspection any governmental license or permit required for the proper and lawful conduct of SDERA's operation of the Property. SDERA shall not use the Property for any use or purpose in violation of the laws of the United States of America, or the laws, ordinances, regulations, orders, or requirements of the State of California, the County of San Diego, the CITY, or of other lawful authorities. SDERA shall, at its sole expense, comply with all applicable statutes, laws, ordinances, rules,

regulations, orders, covenants and restrictions of record, and requirements in effect during the Term (Laws or Orders), regulating the use by SDERA of the Property.

- 3.10.1 Any programs, activities, or events that are not provided for in this Agreement may, in the CITY's sole discretion, require a Temporary Use Permit (TUP) or other permit as required by the CITY.
- 3.10.2 <u>Cannabis Cultivation Prohibited</u>. Notwithstanding any other provision in this Agreement, or in this Article 3.10, SDERA shall neither: (a) cultivate; (b) allow the cultivation of; (3) sell; nor (4) allow the sale of cannabis at the Property.

ARTICLE 4 UTILITIES

4.1 <u>Utility Services</u>. The CITY shall be responsible for maintaining reasonable utility services to the Property. SDERA shall provide and pay for all utilities or services necessary for its use and operation of the Property during the Term, including water, electricity, trash, and sewer charges. SDERA shall pay directly to the applicable utility company such charges, and the City shall have no obligation to pay for such utility services.

ARTICLE 5 REPAIRS; MAINTENANCE

5.1 SDERA's Repair and Maintenance Obligations. SDERA acknowledges that it has made a thorough inspection of the Property and that it accepts the Property "as-is" as of the Commencement Date. At SDERA's own cost and expense, SDERA shall repair, replace, and maintain the Property in good, tenable condition as necessary. SDERA shall not be obligated to repair or replace damage to the Property caused by ordinary wear and tear. SDERA shall maintain the Property in an accessible manner for use by individuals with disabilities and comply with federal and state law regarding accessibility, including but not limited to the Americans with Disabilities Act and California's Disabled Persons Act. Other than repair work in emergency situations not exceeding Three Thousand and no/100 Dollars (\$3,000), SDERA shall not perform any repair work without the CITY's prior written consent. As used in this Article 5.1, "emergency" means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. All emergency repairs performed by the City on the Property are governed by Public Contract Code Section 22050. SDERA's obligations under this Article shall apply regardless of whether the repairs, restorations, and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital or noncapital, the fault or not the fault of SDERA, its agents, employees, volunteers, invitees, visitors, or contractors. All replacements made by the SDERA shall be of like size, kind, and quality to the items replaced.

- 5.2 <u>CITY Repair and Maintenance Obligations</u>. For any repair and maintenance work exceeding Three Thousand and no/100 Dollars (\$3,000), the CITY will consider the nature and priority of the work and available funding to determine if and when such repairs will be completed.
- 5.3 <u>CITY Right to Inspect; CITY Not Obligated to Repair or Maintain</u>. SDERA shall permit the CITY to enter the Property at all times during usual hours of operation to inspect the Property. Any entry pursuant to this Article 5.3 shall not unreasonably interfere with SDERA's operation of the Property. However, nothing contained in this Article 5 shall create any duty on the part of the CITY to do any work which, under any provision of this Agreement, SDERA may be required to do.

ARTICLE 6 IMPROVEMENTS; ALTERATIONS

- Alterations. SDERA may alter, replace, add to, change, or construct additional improvements to the Property (collectively, "Alterations") as SDERA may find necessary or convenient for its operation of the Property. Any Alterations performed by SDERA under this Article 6.1 shall be performed: (a) at SDERA's sole cost and expense; (b) with the CITY's prior written consent; and (c) in accordance with construction plans submitted to and approved by the CITY.
- 6.2 <u>Construction Permits and Licenses</u>. At all times during the Term, SDERA shall procure, at its sole cost and expense, all permits and licenses that are necessary or required from any local governmental agency for the proposed construction of any Alterations. The CITY may, in its sole discretion, waive CITY permitting fees where applicable.
- 6.3 <u>Proposed Plans</u>. In its sole discretion, the CITY may require SDERA to do any of the following:
 - Submit a complete set of proposed plans of any Alterations to the CITY;
 - Apply for and receive a permit from the Building Department to complete any Alterations;
 - Within sixty (60) days of a written request, furnish the CITY with a complete set of "as-built" plans for any CITY-approved Alterations.
- 6.4 <u>Prevailing Wages</u>. SDERA shall comply with prevailing wage statutes for any work not performed by volunteers.

ARTICLE 7 MECHANICS' LIENS; STOP NOTICES

7.1 <u>Mechanics' Liens; Stop Notices</u>. SDERA shall pay, or cause to be paid, the total cost and expense of all works of improvement, as that phrase is defined in the Mechanics Lien

Law in effect at time and place of construction, done by it, or caused to be done by it, on the Property, and for all materials furnished for or in connection with any such work. If any lien or stop notice is filed against the Property, SDERA shall cause the lien or stop notice to be discharged of record within one hundred eighty (180) days after it is filed. SDERA shall indemnify, defend, and hold the CITY harmless from any and all liability, loss, damage, costs, attorneys' fees, and all other expenses on account of claims of lien of laborers, materialmen, or others for work performed, or materials or supplies furnished for SDERA or persons claiming under SDERA.

- 7.2 <u>Notice of Lien or Stop Notice</u>. Should any claim of lien or stop notice related to SDERA's work of improvement of the Property be filed against the Property, or any action be filed against the Property, or any action affecting the title to the Property be commenced, the party receiving notice of such lien or stop notice or action shall immediately give the other party written notice thereof.
- 7.3 Notice of Non-Responsibility. The CITY or its representatives shall have the right to post and keep posted on the Property notices of non-responsibility or such other notices which the CITY may deem to be proper for the protection of the CITY's interest in the Property. SDERA shall, before the commencement of any work which might result in any such lien or stop notice, give to the CITY written notice of its intention to do so with sufficient time to enable posting of such notices.

ARTICLE 8 TAXES

- 8.1 <u>Definition</u>. "Taxes" shall mean all taxes, governmental bonds, special assessments, charges, or transfer taxes, license and transaction fees, including, but not limited to, (a) any state, local, federal income tax, or any real or personal property tax, (b) increases in taxes attributable to SDERA's operation of the Property, or (c) any taxes which are essentially payments to a governmental agency, other than the CITY, for the right to make improvements to the Property.
- 8.2 <u>Possessory Interest</u>. Notwithstanding Article 2.1, SDERA acknowledges that this Agreement may create a possessory interest subject to property taxation and that SDERA may be subject to the payment of taxes levied on such interest. SDERA shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon the Property.
- 8.3 Responsibility for Payment of Taxes. The CITY shall not be obligated to pay any Taxes accruing against any interest in SDERA's use of the Property at any time before or during the Term. SDERA shall pay any Taxes that accrue against any interest in SDERA's use of the Property. Additionally, SDERA shall pay any Taxes levied upon any Improvements, Fixtures, or Personal Property located on the Property to the extent such Taxes result from SDERA's operations or other activities held upon, or in connection with, the Property.

ARTICLE 9

INDEMNIFICATION AND INSURANCE

9.1 SDERA Indemnity. The CITY shall not be liable for, and SDERA shall defend, indemnify, and hold harmless the CITY, its officers, officials, agents, employees, and volunteers from any and all claims, costs, liability, loss, damages to property, injuries to, or death of any person or persons, and all claims, demands, suits, actions, proceedings, reasonable attorneys' fees, and defense costs, of any kind or nature, including workers' compensation claims resulting from, related to, or arising out of SDERA's improvement, operation or use of the Property, or arising either directly or indirectly from any act, error, omission, or negligence of SDERA or its contractors, licensees, invitees, members, agents, servants or employees; provided, however, that this indemnification and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the City, its agents, officers, officials, employees, or volunteers. CITY will cooperate reasonably in the defense of any action, and SDERA shall employ competent counsel, reasonably acceptable to the CITY'S City Attorney.

The indemnity, defense, and hold harmless obligations contained herein shall survive the termination of this Agreement for any alleged or actual omission, act, or negligence under this Agreement that occurred during the term of this Agreement.

- 9.1.1 <u>Third Party Indemnity</u>. SDERA shall not invite third party organizations onto the Property until said third party organization furnishes CITY a written agreement in which it indemnifies and holds CITY harmless, upon terms satisfactory to CITY.
- 9.1.2 <u>Waivers from Third Parties</u>. SDERA agrees to obtain from all guests, invitees, or third party organizations whose participants visit the Property, a waiver of liability and hold harmless agreement upon terms satisfactory to the CITY.
- 9.2 <u>Insurance.</u> SDERA, at its sole cost and expense, shall purchase and maintain, and shall require its subcontractors, and third party organizations SDERA invites onto the Property, to purchase and maintain throughout the term of this Agreement, the following insurance policies:
 - 9.2.1 Commercial General Liability Insurance (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with minimum limits of \$2,000,000 per occurrence and \$4,000,000 aggregate, covering all bodily injury and property damage arising out of its operations under this Agreement. The policy shall name the CITY and its officers, agents, employees, and volunteers as additional insureds, and a separate additional insured endorsement shall be provided. The general aggregate limit must apply solely to this "project" or "location." The Commercial General Liability required by this Article must include Sexual Misconduct Liability coverage.

- 9.2.2 **Automobile Insurance** covering all bodily injury and property damage incurred during the performance of this Agreement, with a minimum coverage of \$1,000,000 combined single limit per accident. Such automobile insurance shall include owned, non-owned, and hired vehicles ("Any Auto"). The policy shall name the CITY and its officers, agents, employees, and volunteers as additional insureds, and a separate additional insured endorsement shall be provided.
- 9.2.3 **Workers' Compensation Insurance** in an amount sufficient to meet statutory requirements covering all of SDERA's employees, and employers' liability insurance with limits of at least \$1,000,000 per accident. In addition, the policy shall be endorsed with a waiver of subrogation in favor of the CITY. Said endorsement shall be provided prior to commencement of work under this Agreement.
- 9.2.4 **Property Insurance** against all risks of loss to any improvements or betterments made by SDERA, or any third party with permission from SDERA, at full replacement cost with no coinsurance penalty provision.
- 9.2.5 The aforesaid policies shall constitute primary insurance, at least as broad as ISO CG 20 01 04 13, as to the CITY, its officers, employees, and volunteers, so that any other policies held by the CITY shall not contribute to any loss under said insurance. Said policies shall provide for thirty (30) days prior written notice to the CITY's Risk Manager, at the address listed in Article 9.2.7 below, of cancellation or material change.
- 9.2.6 If required insurance coverage is provided on a "claims made" rather than "occurrence" form, SDERA shall maintain such insurance coverage for three years after expiration of the term (and any extensions) of this Agreement. In addition, the "retro" date must be on or before the date of this Agreement.
- 9.2.7 The Certificate Holder for all policies of insurance required by this Article 9.2 shall be:

City of National City c/o Risk Manager 1243 National City Boulevard National City, CA 91950-4397

9.2.8 Insurance shall be written with only insurers authorized to conduct business in California that hold a current policy holder's alphabetic and financial size category rating of not less than A VIII according to the current Best's Key Rating Guide, or a company of equal financial stability that is approved by the CITY'S Risk Manager. In the event coverage is provided by non-admitted "surplus lines" carriers, they must be included on the most recent California List of Eligible Surplus Lines Insurers (LESLI list) and otherwise meet rating requirements.

- 9.2.9 This Agreement shall not take effect until certificate(s) or other sufficient proof that these insurance provisions have been complied with, are filed with and approved by the CITY'S Risk Manager. If SDERA does not keep all of such insurance policies in full force and effect at all times during the terms of this Agreement, the CITY may elect to treat the failure to maintain the requisite insurance as a breach of this Agreement and terminate the Agreement as provided herein.
- 9.2.10 All deductibles and self-insured retentions in excess of \$10,000 must be disclosed to and approved by the CITY. CITY reserves the right to modify the insurance requirements of this Article 9.2, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- 9.2.11 If SDERA maintains broader coverage or higher limits (or both) than the minimum limits shown above, the CITY requires and shall be entitled to the broader coverage or higher limits (or both) maintained by SDERA. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the CITY.

ARTICLE 10 TERMINATION

10.1 This Agreement may be terminated with or without cause by the CITY. Termination without cause shall be effective only upon 60-day's written notice to SDERA. During said 60-day period, SDERA shall perform all services in accordance with this Agreement. This Agreement may also be terminated immediately by the CITY for cause in the event of a material breach of this Agreement, misrepresentation by SDERA in connection with the formation of this Agreement or the performance of services, or the failure to perform services as directed by the CITY. Termination with or without cause shall be effected by delivery of written Notice of Termination to SDERA as provided for herein. The CITY further reserves the right to immediately terminate this Agreement upon: (a) the filing of a petition in bankruptcy affecting SDERA; (b) a reorganization of SDERA for the benefit of creditors; or (c) a business reorganization, change in business name or change in business status of SDERA.

ARTICLE 11 HAZARDOUS MATERIALS

11.1 <u>Hazardous Materials Laws-Definition</u>. As used in this Article, the term "Hazardous Materials' Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law") relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under, or about the Property, soil and ground water conditions, or other similar substances or conditions. The following legal authority is a non-exhaustive list of the legal authority that applies to the definition of the term "Hazardous Materials Laws":

- the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C., Section 9601 *et seq.*)
- the Hazardous Materials Transportation Act, as amended (49 U.S.C., Section 1801 *et seq.*), and
- the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C., Section 6901 *et seq.*)
- 11.2 <u>Hazardous Materials Definition</u>. As used in this Article the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that:
 - 11.2.1 is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials;
 - 11.2.2 is controlled, referred to, designated in or governed by any Hazardous Materials Laws;
 - 11.2.3 gives rise to any reporting, notice or publication requirements under any Hazardous Materials Laws, or;
 - 11.2.4 is any other material or substance giving rise to any liability, responsibility or duty upon the CITY or the SDERA with respect to any third person under any Hazardous Materials Law.
- 11.3 <u>SDERA Representations and Warranties</u>. SDERA represents and warrants that, during the Term or any extension thereof, SDERA shall comply with the following provisions of this Article unless otherwise specifically approved in writing by the CITY, subject to the terms and conditions of the SDERA's maintenance obligations provided elsewhere in this Agreement:
 - 11.3.1 SDERA shall not cause or permit any Hazardous Materials to be brought, kept or used in or about the Property by SDERA, its agents, employees, assigns, contractors or invitees, except as required by SDERA's permitted use of the Property in the normal course of operations;
 - 11.3.2 Any handling, transportation, storage, treatment, or usage by SDERA of Hazardous Materials that is to occur on the Property following the Commencement Date shall be in compliance with all applicable Hazardous Materials Laws;
 - 11.3.3 Any leaks, spills, release, discharge, emission or disposal of Hazardous Materials which may occur on the Property following the Commencement Date shall be

- promptly and thoroughly cleaned and removed from the Property by SDERA at its sole expense, and any such discharge shall be promptly reported in writing to the CITY, and to any other appropriate governmental regulatory authorities;
- 11.3.4 No friable asbestos shall be constructed, placed on, deposited, stored, disposed of, or located by SDERA on the Property;
- 11.3.5 No underground improvements, including but not limited to treatment or storage tanks, or water, gas or oil wells shall be located by SDERA on the Property without the CITY's prior written consent;
- 11.3.6 SDERA shall promptly supply the CITY with copies of all notices, reports, correspondence, and submissions made by SDERA to the United States Environmental Protection Agency, the United Occupational Safety and Health Administration, and any other local, state or federal authority which requires submission of any information concerning environmental matters or hazardous wastes or substances pursuant to applicable Hazardous Materials' Laws; and
- 11.3.7 SDERA shall promptly notify the CITY of any liens threatened or attached against the Property pursuant to any Hazardous Materials' Law. If such a lien is filed against the Property, then, within the earlier of (i) twenty (20) days following such filing, or (ii) before any governmental authority commences proceedings to sell the Property pursuant to the lien, SDERA shall either:
 - (a) pay the claim and remove the lien from the Property, or
 - (b) furnish either:
 - (1) a bond or cash deposit reasonably satisfactory to the CITY in an amount not less than the claim from which the lien arises, or;
 - (2) other security satisfactory to the CITY in an amount not less than that which is sufficient to discharge the claim from which the lien arises.
- 11.3.8 At the end of this Agreement, SDERA shall surrender the Property to the CITY free of any and all Hazardous Materials and in compliance with all Hazardous Materials' Laws affecting the Property.

ARTICLE 12 ASSIGNMENT; THIRD PARTY USE OF PROPERTY

12.1 <u>Assignment; CITY's Consent Required</u>. SDERA shall not voluntarily or involuntarily assign or otherwise transfer all or any portion of its rights and duties under this

- Agreement without the CITY's prior written consent. Any attempted assignment or transfer without the CITY's prior written consent shall be void.
- 12.2 <u>Third Party Use of the Property</u>. SDERA may engage third party organizations to provide special services or programming at the Property if:
 - 12.2.1 The City Manager consents, in writing, to the third party organizations' proposed use of the Property and;
 - 12.2.2 The third party organization obtains policies of insurance acceptable to the City's Risk Manager and Article 9.2 of this Agreement.

ARTICLE 13 DEFAULTS BY ARTS OR BY CITY; REMEDIES

- 13.1 <u>Events of Default; Remedies</u>. The following sub-articles shall apply if either SDERA or the CITY neglects, fails to perform, or fails to observe any of their respective obligations under the terms, covenants, or conditions contained in this Agreement ("Default"):
 - 13.1.1 <u>Thirty-Day Correction of Default</u>. If either SDERA or the CITY determines that the other party is in Default, then the non-defaulting party must provide the defaulting party written notice of the Default and thirty (30) days to correct the Default.
 - 13.1.2 Extended Correction of Default. If the defaulting party determines that more than thirty (30) days is required to correct the Default, the defaulting party must provide the other party written notice of the reasons why additional time is required to correct such Default. The defaulting party must use diligent efforts to correct a Default under this Article 13.1.2 and, in any case, must correct such Default within ninety (90) days from the date of the written notice of default.
 - 13.1.3 <u>Remedies for Failure to Correct Default</u>. If the defaulting party fails to comply with Article 13.1.1. or 13.1.2, then the non-defaulting party may immediately terminate this Agreement. The defaulting party shall be liable to the non-defaulting party for any and all damages sustained by the non-defaulting party as a result of the defaulting parties' breach.

ARTICLE 14 ABANDONMENT

14.1 <u>Abandonment</u>. SDERA shall not vacate or abandon the Property at any time during the Term nor permit the Property to remain unoccupied for a period of longer than five (5) consecutive days during the term of this Agreement. These provisions shall not apply if the Property is closed and operation is temporarily discontinued therein on account of strikes, lockouts, acts of nature, or similar causes beyond the reasonable control of SDERA. Any exceptions must be submitted in writing to the City Manager or designee for approval.

ARTICLE 15 DAMAGE OR DESTRUCTION

- 15.1 <u>SDERA's Duty to Repair Casualty</u>. SDERA shall, as expeditiously as reasonably possible, repair any damages to the Property caused by fire, earthquake, or any other identifiable event of a sudden, unexpected, or unusual nature ("Casualty"), and repair, restore, and replace any such damaged or destroyed Fixtures, Improvements or Personal Property ("Casualty Repairs"). Any Casualty Repairs made under this Article 15 are:
 - (a) To be performed at SDERA's sole cost and expense;
 - (b) To be performed except as otherwise provided in this Article 15; and are
 - (c) Subject to all other terms and conditions of this Agreement.
- 15.2 <u>Construction Provisions</u>. In the event of any reconstruction of the Property, Fixtures or Improvements required of SDERA pursuant to this Article, SDERA shall repair the Property, and repair or rebuild such Fixtures and Improvements, to substantially the same condition they were in immediately preceding such Casualty.
- 15.3 No Abatement. In the event of reconstruction, replacement, or repair by SDERA pursuant to this Article, SDERA shall continue its operations on the Property during any such period to the extent reasonably practicable from the standpoint of prudent business management, and in continuing compliance with applicable laws and regulations. SDERA shall not be entitled to any compensation or damages from CITY for: (a) loss of use of the whole or any part of the Property; (b) SDERA's Personal Property; or (c) any inconvenience or annoyance occasioned by such damage, reconstruction, or replacement.
- 15.4 <u>Major Destruction</u>. Notwithstanding any of the foregoing provisions of this Article to the contrary, if, at any time after the Commencement Date, (a) the Improvements are damaged or destroyed to the extent of more than twenty-five percent (25%) of their replacement cost, or (b) the damage is such that the Improvements cannot be repaired and restored within one hundred and eighty (180) days after the Casualty, then SDERA shall have the right to terminate this Agreement upon thirty (30) days' prior written notice to the CITY.

ARTICLE 16 EMINENT DOMAIN

- 16.1 <u>Condemnation</u>. SDERA may terminate this Agreement within twenty (20) days after the date that a condemning authority (by a party other than the CITY) takes possession of the Property by delivery of written notice of such condemnation if:
 - (a) If all of the Property is taken under eminent domain proceedings; or

(b) less than all of the Property is taken under such eminent domain proceeding and the part taken substantially impairs the ability of SDERA to use the remainder of the Property for the purposes permitted by this Agreement.

In the absence of such written notice from a condemning authority, SDERA may terminate this Agreement within twenty (20) days after the condemning authority shall have taken possession.

- 16.2 <u>Continuation of Operating Agreement after Condemnation</u>. If this Agreement is not terminated by SDERA, it shall remain in full force and effect as to any portion of the Property remaining, and this Agreement will end as of the date possession of the part taken by the public entity as to the part of the Property that is taken.
- 16.3 <u>Award.</u> All monies awarded in any condemnation shall belong to the CITY. The CITY shall have no liability to SDERA for any award not provided by the condemning authority.

ARTICLE 17 SALE OR MORTGAGE BY CITY

- 17.1 <u>Sale or Mortgage</u>. The CITY may, pursuant to existing and subsequently enacted CITY ordinances and State laws, at any time, and without the consent of SDERA, vacate, sell, purchase, exchange, transfer, assign, lease, encumber or convey the CITY's interest in whole or in part, in the Property (collectively referred to in this Article as a "Sale"). The CITY shall provide to SDERA written notice of the CITY's intent to a Sale or discontinuance pursuant to this Article at least ninety (90) days prior to said proposed transfer.
- 17.2 <u>Release on Sale</u>. From and after a Sale or discontinuance of the CITY's entire interest in the Property, the CITY shall be released from all liability to SDERA and SDERA successors and assigns arising from this Agreement because of any act, occurrence, or omission of the CITY occurring after such Sale.

ARTICLE 18 CITY'S RIGHT OF ACCESS

- 18.1 <u>Right of Entry.</u> CITY, its agents, employees, and contractors may enter the Property at any time with or without notice to SDERA to:
 - (a) respond to health and safety concerns;
 - (b) inspect the Property and Improvements;
 - (c) determine whether SDERA is complying with its obligations in this Agreement (including its obligations with respect to compliance with Hazardous Materials Laws)
 - (d) post notices of non-responsibility or similar notices
 - (e) inspect the progress of construction of any improvement; or

(f) make repairs that this Agreement requires or allows CITY to make, or make repairs to any adjoining space or utility services, or make repairs, alterations, or improvements to any other portion of the Property

All work enumerated in this Article 18.1 must be done as promptly as reasonably possible and so as to cause as little interference to SDERA as reasonably possible.

ARTICLE 19 NOTICES

19.1 Notices. Whenever in this Agreement it shall be required or permitted that notice or demand be given or served by either party to this Agreement to or on the other, such notice or demand shall be in writing, mailed or personally delivered to the other party at the addresses specified below. Mailed notices shall be sent by United States Postal Service, postage prepaid and shall be deemed to have been given, delivered, and received three (3) business days after the date such notice or other communication is posted by the United States Postal Service. All other such notices or other communications shall be deemed given, delivered, and received upon actual receipt. Either party may, by written notice delivered pursuant to this provision, at any time designate a different address to which notices shall be sent.

CITY: CITY OF NATIONAL CITY

City Manager

City of National City

1243 National City Boulevard National City, CA 91950-4397

With a copy to:

Housing and Economic Development Manager

City of National City

140 East 12th Street, Suite B National City, CA 91950

SDERA:

San Diego Electric Railway Association, Inc.

Executive Director 922 West 23rd Street National City, CA 91950

ARTICLE 20 NON-DISCRIMINATION

20.1 <u>Non-Discrimination</u>. SDERA hereby covenants by and for itself, its successors, assigns and all persons claiming under or through it, that this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against, or segregation of, any person or group of persons on account of race, age, color, creed,

religion, sex, sexual orientation, marital status, national origin, physical handicap, medical condition or ancestry in the use, operation, or enjoyment of the Property.

ARTICLE 21 RECORDS, ACCOUNTS, AND AUDITS

- 21.1 SDERA's Duty to Keep Records. SDERA shall, at all times during the Term, and for a period of five (5) years following expiration or earlier termination of this Agreement, keep or cause to be kept, true and complete books, records and accounts of all (a) construction undertaken pursuant to the rights conferred on SDERA under this Agreement, and (b) financial transactions in the operation of all business activities, of whatever nature, conducted pursuant to the rights granted by this Agreement. Such records shall also include the source and disposition of all trash and other waste collected and disposed of by SDERA in the operation of its business. Said records must be supported by source documents such as receipts, invoices, sales slips, cash register tapes, purchase invoices or other pertinent documents.
- 21.2 <u>CITY's Right to Audit</u>. All SDERA books, accounts, and records shall be kept and made available at one location within the limits of the County of San Diego. The CITY shall have the right at any reasonable time to examine and perform audits of SDERA's records pertaining to (a) construction undertaken pursuant to the rights conferred on SDERA under this Agreement, and (b) its operations on the Property, including, without limitation, any records pertaining to SDERA's use of utilities on the Property. The cost of said audits shall be borne by the CITY, except that SDERA shall provide to the CITY, at SDERA's expense, necessary data to enable the CITY to fully comply with each and every requirement of the State of California or by the United States of America for information or reports relating to this Agreement and to SDERA's use of the Property.

ARTICLE 22 ADMINISTRATIVE PROVISIONS

- 22.1 <u>Authority</u>. SDERA represents and warrants that it has full power and authority to execute and fully perform its obligations under this Agreement pursuant to its governing instruments, without the need for any further action, and that the person executing this Agreement on behalf of SDERA is the duly designated agent of SDERA and is authorized to do so.
- 22.2 <u>Captions</u>. The captions and headings appearing in this Operating Agreement are inserted for convenience only and in no way define, limit, construe, or describe the scope or intent of the provisions of this Agreement.
- 22.3 <u>CITY Approval</u>. Except where stated in this Agreement to the contrary, the phrases "CITY approval," and "CITY's written approval" or such similar phrases shall mean approval of the City Manager or designee, which approval shall not be unreasonably withheld.

- 22.4 <u>Cumulative Remedies</u>. In the event of a default under this Agreement, each party's remedies shall be limited to those remedies set forth in this Agreement. Any such remedies are cumulative and not exclusive of any other remedies under this Agreement to which the non-defaulting party may be entitled.
- 22.5 <u>Entire Agreement</u>. This Agreement, together with all addenda and exhibits attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior or contemporaneous agreements, understandings and representations, oral or written, are superseded.
- 22.6 <u>Exhibits</u>. All exhibits referred to herein are attached hereto and incorporated by reference:
 - Exhibit "A": Legal description of the Property
- 22.7 Force Majeure. If either party is prevented or delayed from performing any act or discharging any obligation hereunder, because of any and all causes beyond either party's reasonable control, including unusual delays in deliveries, abnormally adverse weather conditions, unavoidable casualties, strikes, labor disputes, inability to obtain labor, materials or equipment, acts of God, governmental restrictions, regulations or controls, any hostile government actions, acts of terrorism, civil commotion and fire or other casualty, legal actions attacking the validity of this Agreement or the CITY or SDERA's operations of the Property, or any other casualties beyond the reasonable control of either party ("Force Majeure"), performance of such act shall be excused for the period of such delay, and the period of such delay. Force Majeure shall not include any bankruptcy, insolvency, or other financial inability on the part of either party hereto.
- 22.8 <u>Governing Law</u>. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California.
- 22.9 <u>Independent Contractor</u>. SDERA acknowledges that it is an independent contractor; that it alone retains control of the manner of conducting its activities in furtherance of this Agreement; and that it, as well as any persons, contractors or agents it may employ, are not employees of CITY for any purpose.
- 22.10 <u>Interpretation</u>. The provisions of this Agreement shall be liberally construed to effectuate its purpose. The language of all parts of this Agreement shall be construed simply according to its plain meaning and shall not be construed for or against either party.
- 22.11 <u>SDERA's Agreement Administration</u>. SDERA confirms that SDERA's Agreement Administrator has been given full operational responsibility for compliance with the terms of this Agreement. SDERA shall provide the CITY with a written schedule of its normal hours of business operation on the Property, and SDERA's Agreement Administrator, or a representative designated thereby, shall be available to the CITY

- during SDERA's normal business hours, to resolve problems or answer question pertaining to this Agreement and SDERA's operations on the Property.
- 22.12 <u>Modification</u>. The provisions of this Agreement may not be modified, except by a written amendment signed by both parties.
- 22.13 <u>Partial Invalidity</u>. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby. Each provision shall be valid and enforceable to the fullest extent permitted by law.
- 22.14 <u>Successors & Assigns</u>. This Agreement shall be binding on and inure to the benefit of the parties and their successors and assigns, except as may otherwise be provided herein. SDERA shall not assign this agreement to any other party unless approved in writing by the CITY.
- 22.15 <u>Time of Essence</u>. Time is of the essence of each and every provision of this Agreement.
- 22.16 <u>Waiver</u>. No provision of this Operating Agreement or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed.

IN WITNESS WHEREOF, the CITY and SDERA have duly executed this Agreement as of the day and year first above written.

CITY OF NATIONAL CITY (CITY)	SAN DIEGO ELECTRIC RAILWAY ASSOCIATION, a California non-profit corporation (SDERA)
By: Ron Morrison, Mayor	By:
	(Print)
APPROVED AS TO FORM: Angil P. Morris-Jones	$\overline{(Title)}$
	By:
By:	(Name)
Roberto M. Contreras Deputy City Attorney	(Print)
Deputy City Mitoriney	(1.1000)

(Title)





MAINTENANCE AND OPERATING AGREEMENT

by and between

CITY OF NATIONAL CITY

and

NATIONAL CITY LIVING HISTORY FARM PRESERVE

Dated as of _______, 2018

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MAINTENANCE AND OPERATING AGREEMENT BY AND BETWEEN THE CITY OF NATIONAL CITY AND

NATIONAL CITY LIVING HISTORY FARM PRESERVE

This Maintenance and Operating Agreement (the "Agreement") is entered into as of _______, 2018, by and between the CITY OF NATIONAL CITY, a municipal corporation (the "CITY"), and National City Living History Farm Preserve, a California non-profit corporation ("NCLHFP").

RECITALS

- A. WHEREAS, the CITY owns the improved real property commonly known as the "Stein Farm," located at 1808 "F" Avenue, National City, California 91950 (the "Property"). The improvements on the Property are referred to as the "Stein Farm House" and the "Stein Farm Barn". The Property shall also include the Victorian House that is expected to be relocated onto the Property from 1904 "F" Avenue. A legal description of the Property is attached hereto as Exhibit "A" and incorporated herein by reference.
- B. WHEREAS Article 11, Section 7 of the California Constitution empowers the City to provide for the health and welfare of its residents.
- C. WHEREAS, the CITY desires to enter into a Maintenance & Operating Agreement due to the special services to be performed under this Agreement for the CITY and to facilitate a more collaborative relationship between the CITY and the operator of the Property.
- D. WHEREAS, one of the goals of the CITY's General Plan is to develop educational experiences capable of promoting the cultural heritage of the CITY and lifting the spirits of residents and visitors to National City.
- E. WHEREAS, the CITY desires the services of an organization to maintain and operate the Property in a manner beneficial to the public.
- F. WHEREAS, the CITY has further determined that NCLHFP is a qualified, non-profit corporation experienced in running a living history farm.
- G. WHEREAS, the CITY wishes to have NCLHFP maintain and operate the Property as an educational farm and museum for the community's benefit, and NCLHFP is willing to operate and maintain the Property for such a purpose.

NOW, THEREFORE, in consideration of the foregoing facts, and in consideration of the promises and covenants hereinafter set forth, the parties agree as follows:

ARTICLE 1 TERM OF AGREEMENT

- 1.1 <u>Term.</u> The term of this Agreement shall be sixty (60) months, commencing October 1 2018 (the "Commencement Date") and expiring on October 31, 2023.
- 1.2 Option to Extend Term. If NCLHFP is not in default of any provision of this Agreement upon the expiration of the term described in Article 1.1, the City Manager or designee may extend the term for up to three (3) additional sixty (60) month periods. The initial sixty-month term, and any extension pursuant to this Article 1.2, shall collectively be referred to hereafter as the "Term."

ARTICLE 2 THE PROPERTY

- 2.1 <u>License for Use of Property</u>. The CITY grants NCLHFP a revocable license to enter and operate the Property for the purpose of operating a public educational farm and museum for the benefit of National City residents and visitors. NCLHFP's revocable license is subject to the covenants and requirements of this Agreement as of the Commencement Date.
- 2.2 <u>Ownership of Personal Property and Improvements</u>. The rights and obligations of the parties regarding the ownership of personal property and improvements on the Property shall be as follows:
 - 2.2.1 Ownership of Personal Property. All improvements existing on the Property (Improvements), together with all fixtures permanently attached to the Property (Fixtures), as of the Commencement Date shall remain the property of the CITY during the Term. NCLHFP shall not remove any Improvements or Fixtures from the Property and shall also not waste, destroy, or modify any Improvements or Fixtures on the Property, except as permitted by this Agreement.
 - 2.2.2 Ownership of Improvements and Equipment. All improvements made to the property by NCLHFP shall become the property of the CITY.
- 2.2.3 <u>1845</u> "E" Avenue. NCLHFP has received rental income from tenants living at 1845 "E" Avenue in National City ("Rental Property") in exchange for managing the upkeep of the residence and landscaping. Such arrangement will automatically expire once the existing tenants vacate the Rental Property ("Tenant Move-Out"). If the existing tenants continue to occupy the Rental Property five years after the Commencement Date, NCLHFP shall commence all legal unlawful detainer proceedings to recover possession of the Rental Property. NCLHFP must remove any of its personal property from the Rental Property within sixty (60) days of the Tenant Move-Out, after which time the City will begin the process of selling the Rental Property. No further provision, either retroactive or prospective, will be made to NCLHFP for the loss of this rental income or the loss of managing the Rental Property's residence and landscaping.

ARTICLE 3 PERMITTED USE

- 3.1 <u>Purpose</u>. The parties intend that the operation of the Property by NCLHFP will provide an opportunity for the community to experience life on a turn-of-the-century farm and provide educational experiences for the children of National City.
- 3.2 Operations Plan. NCLHFP must submit a written operations plan to the CITY that addresses all aspects of maintaining and operating the Property. This written operations plan must include, but will not be limited to, descriptions of the following:
 - 1) Hours of operation;
 - 2) Proposed activities or facilities available to the public;
 - 3) The number of employees, volunteers, or long term caretakers on staff;
 - 4) Visitor safety and property security;
 - 5) Capital improvements, and barn replacement;
 - 6) Property, building, equipment and preservation of grounds;
 - 7) Sources of funding, fundraising plan;
 - 8) Community outreach;
 - 9) Parking;
 - 10) Lighting;
 - 11) Handicap accommodations;
 - 12) Facility rentals to third parties.
- 3.3 <u>Hours of Operation</u>. NCLHFP shall open the Property to the general public on Saturdays from 10 a.m. to 2p.m. and also for public special events scheduled in advance of the event. NCLHFP shall post, in a location visible from either East 18th Street or "F" Avenue, the Property's hours of operation.
 - 3.3.1. <u>Barn Activities Prohibited</u>. NCLHFP, and any third party who uses the Property, shall prohibit members of the public from entering the barn or from coming within 25 feet of the barn.
- 3.4 <u>Service Fees.</u> NCLHFP shall not provide any programs and services for profit. However, NCLHFP may charge user fees for classes and programs offered to school groups and the community to offset costs incurred by NCLHFP in its maintenance and operation of the Property. Any fees charged under this Article 3.4 must be approved by the City Manager or designee. The public shall pay no fee to gain access to the Property during those hours of operation listed in this Article 3.
- 3.5 Reporting by NCLHFP. NCLHFP shall provide annual reports to the CITY that identify the total number of: (a) National City residents who participated in NCLHFP events; (b) participants and volunteers who participated in NCLHFP events; (c) events and programs coordinated by NCLHFP; (d) capital projects completed; (e) operating and maintenance plans; and (f) any other relevant statistics. The information required to appear in the annual reports by this Article 3.5 will be referred to as "Statistical Information." Each annual report will include all previous years' worth of Statistical Information, if any.

NCLHFP will deliver the annual report to the CITY at a mutually agreeable date and time.

- Annual Budget. NCLHFP shall provide the CITY with a proposed budget for NCLHFP's estimated maintenance and operating expenses for the Property by July 1st of each year during the Term. NCLHFP shall provide to the CITY an audited financial report and tax return, forty-five (45) days following June 30th of each year during the Term.
- 3.7 <u>Volunteer Management</u>. NCLHFP may utilize volunteers to operate the Property, and in providing the Projects required by this Agreement. NCLHFP is responsible for recruiting, training, and managing all volunteers on the Property. Volunteers are considered the responsibility of NCLHFP for the purpose of workers compensation or general liability.
- 3.8 <u>Alcohol Use</u>. NCLHFP, or third parties with permission from NCLHFP, may, hold events on the Property where alcoholic beverages are served. Alcoholic beverages shall be served subject to the following requirements:
 - Alcohol will not be served during youth programming under any circumstances.
 - Alcohol will be served in limited areas of the Property, designated by NCLHFP in advance, and approved by the City Manager or designee.
 - Alcoholic beverages must be served by a licensed bartender, with a copy of the bartender's license on the Property.
 - The event host must obtain approval from the state Department of Alcoholic Beverage Control to serve alcohol.
 - The event host is responsible for all guest behavior during and following the service of alcohol.
 - "Last call" for service of alcohol shall be at least thirty (30) minutes prior to the scheduled end of the event.

When third parties (with permission from NCLHFP) serve alcoholic beverages, the following additional requirements shall apply:

- The third party shall provide the CITY proof of liability insurance acceptable to the City's Risk Manager.
- The third party shall provide two licensed security guard for every 100 guests registered to attend the event.
- NCLHFP shall reserve the authority to immediately terminate an event if NCLHFP determines, in its sole discretion, the third party has not complied with any requirement of this Article 3.8.
- NCLHFP shall provide the CITY a copy of their third party rental agreement template for approval.

- 3.9 <u>Consideration</u>. NCLHFP's payment of \$1.00 to the City, in addition to its performance under the remainder of this Agreement, shall serve as the sole consideration due the CITY for NCLHFP' license to use and operate the Property.
- 3.10 <u>Compliance with Laws</u>. NCLHFP, at its sole expense, shall procure, maintain, and hold available for the CITY's inspection any governmental license or permit required for the proper and lawful conduct of NCLHFP's operation of the Property. NCLHFP shall not use the Property for any use or purpose in violation of the laws of the United States of America, or the laws, ordinances, regulations, orders, or requirements of the State of California, the County of San Diego, the CITY, or of other lawful authorities. NCLHFP shall, at its sole expense, comply with all applicable statutes, laws, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect during the Term (Laws or Orders), regulating the use by NCLHFP of the Property.
 - 3.10.1 Any programs, activities, or events that are not provided for in this Agreement may, in the CITY's sole discretion, require a Temporary Use Permit (TUP) or other permit as required by the CITY.
 - 3.10.2 <u>Cannabis Cultivation Prohibited</u>. Notwithstanding any other provision in this Agreement, or in this Article 3.10, NCLHFP shall neither cultivate, nor allow the cultivation of, cannabis at the Property.

ARTICLE 4 UTILITIES

4.1 <u>Utility Services</u>. The CITY shall be responsible for maintaining reasonable utility services to the Property. NCLHFP shall provide and pay for all utilities or services necessary for its use and operation of the Property during the Term, including water, electricity, trash, and sewer charges. NCLHFP shall pay directly to the applicable utility company such charges, and the City shall have no obligation to pay for such utility services.

ARTICLE 5 REPAIRS; MAINTENANCE

5.1 NCLHFP' Repair and Maintenance Obligations. NCLHFP acknowledges that it has made a thorough inspection of the Property and that it accepts the Property "as-is" as of the Commencement Date. At NCLHFP's own cost and expense, NCLHFP shall repair, replace, and maintain the Property in good, tenable condition as necessary. NCLHFP shall not be obligated to repair or replace damage to the Property caused by ordinary wear and tear. NCLHFP shall maintain the Property in an accessible manner for use by individuals with disabilities and comply with federal and state law regarding accessibility, including but not limited to the Americans with Disabilities Act and California's Disabled Persons Act. Other than repair work in emergency situations not exceeding Three Thousand and no/100 Dollars (\$3,000), NCLHFP shall not perform any repair work without the CITY's prior written consent. As used in this Article 5.1,

"emergency" means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. All emergency repairs performed by the City on the Property are governed by Public Contract Code Section 22050. NCLHFP' obligations under this Article shall apply regardless of whether the repairs, restorations, and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital or noncapital, the fault or not the fault of NCLHFP, its agents, employees, volunteers, invitees, visitors, or contractors. All replacements made by the NCLHFP shall be of like size, kind, and quality to the items replaced.

- 5.2 <u>CITY Repair and Maintenance Obligations</u>. For any repair and maintenance work exceeding Three Thousand and no/100 Dollars (\$3,000), the CITY will consider the nature and priority of the work and available funding to determine if and when such repairs will be completed.
- 5.3 <u>CITY Right to Inspect; CITY Not Obligated to Repair or Maintain</u>. NCLHFP shall permit the CITY to enter the Property at all times during usual hours of operation to inspect the Property. Any entry pursuant to this Article 5.3 shall not unreasonably interfere with NCLHFP's operation of the Property. However, nothing contained in this Article 5 shall create any duty on the part of the CITY to do any work which, under any provision of this Agreement, NCLHFP may be required to do.

ARTICLE 6 IMPROVEMENTS; ALTERATIONS

- Alterations. NCLHFP may alter, replace, add to, change, or construct additional improvements to the Property (collectively, "Alterations") as NCLHFP may find necessary or convenient for its operation of the Property. Any Alterations performed by NCLHFP under this Article 6.1 shall be performed: (a) at NCLHFP' sole cost and expense; (b) with the CITY's prior written consent; and (c) in accordance with construction plans submitted to and approved by the CITY.
- 6.2 <u>Construction Permits and Licenses</u>. At all times during the Term, NCLHFP shall procure, at its sole cost and expense, all permits and licenses that are necessary or required from any local governmental agency for the proposed construction of any Alterations. The CITY may, in its sole discretion, waive CITY permitting fees where applicable.
- 6.3 <u>Proposed Plans</u>. In its sole discretion, the CITY may require NCLHFP to do any of the following:
 - Submit a complete set of proposed plans of any Alterations to the CITY;
 - Apply for and receive a permit from the Building Department to complete any Alterations;

- Within sixty (60) days of a written request, furnish the CITY with a complete set of "as-built" plans for any CITY-approved Alterations.
- 6.4 <u>Prevailing Wages</u>. NCLHFP shall comply with prevailing wage statutes for any work not performed by volunteers.

ARTICLE 7 MECHANICS' LIENS; STOP NOTICES

- 7.1 Mechanics' Liens; Stop Notices. NCLHFP shall pay, or cause to be paid, the total cost and expense of all works of improvement, as that phrase is defined in the Mechanics Lien Law in effect at time and place of construction, done by it, or caused to be done by it, on the Property, and for all materials furnished for or in connection with any such work. If any lien or stop notice is filed against the Property, NCLHFP shall cause the lien or stop notice to be discharged of record within one hundred eighty (180) days after it is filed. NCLHFP shall indemnify, defend, and hold the CITY harmless from any and all liability, loss, damage, costs, attorneys' fees, and all other expenses on account of claims of lien of laborers, materialmen, or others for work performed, or materials or supplies furnished for NCLHFP or persons claiming under NCLHFP.
- 7.2 <u>Notice of Lien or Stop Notice</u>. Should any claim of lien or stop notice related to NCLHFP's work of improvement of the Property be filed against the Property, or any action be filed against the Property, or any action affecting the title to the Property be commenced, the party receiving notice of such lien or stop notice or action shall immediately give the other party written notice thereof.
- 7.3 Notice of Non-Responsibility. The CITY or its representatives shall have the right to post and keep posted on the Property notices of non-responsibility or such other notices which the CITY may deem to be proper for the protection of the CITY's interest in the Property. NCLHFP shall, before the commencement of any work which might result in any such lien or stop notice, give to the CITY written notice of its intention to do so with sufficient time to enable posting of such notices.

ARTICLE 8 TAXES

- 8.1 <u>Definition</u>. "Taxes" shall mean all taxes, governmental bonds, special assessments, charges, or transfer taxes, license and transaction fees, including, but not limited to, (a) any state, local, federal income tax, or any real or personal property tax, (b) increases in taxes attributable to NCLHFP's operation of the Property, or (c) any taxes which are essentially payments to a governmental agency, other than the CITY, for the right to make improvements to the Property.
- 8.2 <u>Possessory Interest</u>. Notwithstanding Article 2.1, NCLHFP acknowledges that this Agreement may create a possessory interest subject to property taxation and that NCLHFP may be subject to the payment of taxes levied on such interest. NCLHFP shall

- pay, before delinquency, all taxes, assessments, and fees assessed or levied upon the Property.
- 8.3 Responsibility for Payment of Taxes. The CITY shall not be obligated to pay any Taxes accruing against any interest in NCLHFP's use of the Property at any time before or during the Term. NCLHFP shall pay any Taxes that accrue against any interest in NCLHFP's use of the Property. Additionally, NCLHFP shall pay any Taxes levied upon any Improvements, Fixtures, or Personal Property located on the Property to the extent such Taxes result from NCLHFP's operations or other activities held upon, or in connection with, the Property.

ARTICLE 9 INDEMNIFICATION AND INSURANCE

9.1 NCLHFP Indemnity. The CITY shall not be liable for, and NCLHFP shall defend, indemnify, and hold harmless the CITY, its officers, officials, agents, employees, and volunteers from any and all claims, costs, liability, loss, damages to property, injuries to, or death of any person or persons, and all claims, demands, suits, actions, proceedings, reasonable attorneys' fees, and defense costs, of any kind or nature, including workers' compensation claims resulting from, related to, or arising out of NCLHFP's improvement, operation or use of the Property, or arising either directly or indirectly from any act, error, omission, or negligence of NCLHFP or its contractors, licensees, invitees, members, agents, servants or employees; provided, however, that this indemnification and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the City, its agents, officers, officials, employees, or volunteers. CITY will cooperate reasonably in the defense of any action, and NCLHFP shall employ competent counsel, reasonably acceptable to the CITY'S City Attorney.

The indemnity, defense, and hold harmless obligations contained herein shall survive the termination of this Agreement for any alleged or actual omission, act, or negligence under this Agreement that occurred during the term of this Agreement.

- 9.1.1 <u>Third Party Indemnity</u>. NCLHFP shall not invite third party organizations onto the Property until said third party organization furnishes CITY a written agreement in which it indemnifies and holds CITY harmless, upon terms satisfactory to CITY.
- 9.1.2 <u>Waivers from Third Parties</u>. NCLHFP agrees to obtain from all guests, invitees, or third party organizations whose participants visit the Property, a waiver of liability and hold harmless agreement upon terms satisfactory to the CITY.
- 9.2 <u>Insurance.</u> NCLHFP, at its sole cost and expense, shall purchase and maintain, and shall require its subcontractors, and third party organizations NCLHFP invites onto the Property, to purchase and maintain throughout the term of this Agreement, the following insurance policies:

- 9.2.1 Commercial General Liability Insurance (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, covering all bodily injury and property damage arising out of its operations under this Agreement. The policy shall name the CITY and its officers, agents, employees, and volunteers as additional insureds, and a separate additional insured endorsement shall be provided. The general aggregate limit must apply solely to this "project" or "location." The Commercial General Liability required by this Article must include Sexual Misconduct Liability coverage.
- 9.2.2 **Automobile Insurance** covering all bodily injury and property damage incurred during the performance of this Agreement, with a minimum coverage of \$1,000,000 combined single limit per accident. Such automobile insurance shall include owned, non-owned, and hired vehicles ("Any Auto"). The policy shall name the CITY and its officers, agents, employees, and volunteers as additional insureds, and a separate additional insured endorsement shall be provided.
- 9.2.3 **Workers' Compensation Insurance** in an amount sufficient to meet statutory requirements covering all of NCLHFP's employees, and employers' liability insurance with limits of at least \$1,000,000 per accident. In addition, the policy shall be endorsed with a waiver of subrogation in favor of the CITY. Said endorsement shall be provided prior to commencement of work under this Agreement.
- 9.2.4 **Property Insurance** against all risks of loss to any improvements or betterments made by NCLHFP, or any third party with permission from NCLHFP, at full replacement cost with no coinsurance penalty provision.
- 9.2.5 The aforesaid policies shall constitute primary insurance, at least as broad as ISO CG 20 01 04 13, as to the CITY, its officers, employees, and volunteers, so that any other policies held by the CITY shall not contribute to any loss under said insurance. Said policies shall provide for thirty (30) days prior written notice to the CITY's Risk Manager, at the address listed in Article 9.2.7 below, of cancellation or material change.
- 9.2.6 If required insurance coverage is provided on a "claims made" rather than "occurrence" form, NCLHFP shall maintain such insurance coverage for three years after expiration of the term (and any extensions) of this Agreement. In addition, the "retro" date must be on or before the date of this Agreement.
- 9.2.7 The Certificate Holder for all policies of insurance required by this Article 9.2 shall be:

City of National City c/o Risk Manager 1243 National City Boulevard National City, CA 91950-4397

- 9.2.8 Insurance shall be written with only insurers authorized to conduct business in California that hold a current policy holder's alphabetic and financial size category rating of not less than A VIII according to the current Best's Key Rating Guide, or a company of equal financial stability that is approved by the CITY'S Risk Manager. In the event coverage is provided by non-admitted "surplus lines" carriers, they must be included on the most recent California List of Eligible Surplus Lines Insurers (LESLI list) and otherwise meet rating requirements.
- 9.2.9 This Agreement shall not take effect until certificate(s) or other sufficient proof that these insurance provisions have been complied with, are filed with and approved by the CITY'S Risk Manager. If NCLHFP does not keep all of such insurance policies in full force and effect at all times during the terms of this Agreement, the CITY may elect to treat the failure to maintain the requisite insurance as a breach of this Agreement and terminate the Agreement as provided herein.
- 9.2.10 All deductibles and self-insured retentions in excess of \$10,000 must be disclosed to and approved by the CITY. CITY reserves the right to modify the insurance requirements of this Article 9.2, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- 9.2.11 If NCLHFP maintains broader coverage or higher limits (or both) than the minimum limits shown above, the CITY requires and shall be entitled to the broader coverage or higher limits (or both) maintained by NCLHFP. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the CITY.

ARTICLE 10 TERMINATION

10.1 This Agreement may be terminated with or without cause by the CITY. Termination without cause shall be effective only upon 60-day's written notice to NCLHFP. During said 60-day period, NCLHFP shall perform all services in accordance with this Agreement. This Agreement may also be terminated immediately by the CITY for cause in the event of a material breach of this Agreement, misrepresentation by NCLHFP in connection with the formation of this Agreement or the performance of services, or the failure to perform services as directed by the CITY. Termination with or without cause shall be effected by delivery of written Notice of Termination to NCLHFP as provided for herein. The CITY further reserves the right to immediately terminate this Agreement upon: (a) the filing of a petition in bankruptcy affecting NCLHFP; (b) a reorganization of

NCLHFP for the benefit of creditors; or (c) a business reorganization, change in business name or change in business status of NCLHFP.

ARTICLE 11 HAZARDOUS MATERIALS

- 11.1 <u>Hazardous Materials Laws-Definition</u>. As used in this Article, the term "Hazardous Materials' Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law") relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under, or about the Property, soil and ground water conditions, or other similar substances or conditions. The following legal authority is a non-exhaustive list of the legal authority that applies to the definition of the term "Hazardous Materials Laws":
 - the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C., Section 9601 *et seq.*)
 - the Hazardous Materials Transportation Act, as amended (49 U.S.C., Section 1801 *et seq.*), and
 - the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C., Section 6901 *et seq.*)
- 11.2 <u>Hazardous Materials Definition</u>. As used in this Article the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that:
 - 11.2.1 is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials;
 - 11.2.2 is controlled, referred to, designated in or governed by any Hazardous Materials Laws:
 - 11.2.3 gives rise to any reporting, notice or publication requirements under any Hazardous Materials Laws, or;
 - 11.2.4 is any other material or substance giving rise to any liability, responsibility or duty upon the CITY or the NCLHFP with respect to any third person under any Hazardous Materials Law.
- 11.3 <u>NCLHFP Representations and Warranties</u>. NCLHFP represents and warrants that, during the Term or any extension thereof, NCLHFP shall comply with the following provisions of this Article unless otherwise specifically approved in writing by the CITY, subject to

the terms and conditions of the NCLHFP's maintenance obligations provided elsewhere in this Agreement:

- 11.3.1 NCLHFP shall not cause or permit any Hazardous Materials to be brought, kept or used in or about the Property by NCLHFP, its agents, employees, assigns, contractors or invitees, except as required by NCLHFP's permitted use of the Property in the normal course of operations;
- 11.3.2 Any handling, transportation, storage, treatment, or usage by NCLHFP of Hazardous Materials that is to occur on the Property following the Commencement Date shall be in compliance with all applicable Hazardous Materials Laws;
- 11.3.3 Any leaks, spills, release, discharge, emission or disposal of Hazardous Materials which may occur on the Property following the Commencement Date shall be promptly and thoroughly cleaned and removed from the Property by NCLHFP at its sole expense, and any such discharge shall be promptly reported in writing to the CITY, and to any other appropriate governmental regulatory authorities;
- 11.3.4 No friable asbestos shall be constructed, placed on, deposited, stored, disposed of, or located by NCLHFP on the Property;
- 11.3.5 No underground improvements, including but not limited to treatment or storage tanks, or water, gas or oil wells shall be located by NCLHFP on the Property without the CITY's prior written consent;
- 11.3.6 NCLHFP shall promptly supply the CITY with copies of all notices, reports, correspondence, and submissions made by NCLHFP to the United States Environmental Protection Agency, the United Occupational Safety and Health Administration, and any other local, state or federal authority which requires submission of any information concerning environmental matters or hazardous wastes or substances pursuant to applicable Hazardous Materials' Laws; and
- 11.3.7 NCLHFP shall promptly notify the CITY of any liens threatened or attached against the Property pursuant to any Hazardous Materials' Law. If such a lien is filed against the Property, then, within the earlier of (i) twenty (20) days following such filing, or (ii) before any governmental authority commences proceedings to sell the Property pursuant to the lien, NCLHFP shall either:
 - (a) pay the claim and remove the lien from the Property, or
 - (b) furnish either:
 - (1) a bond or cash deposit reasonably satisfactory to the CITY in an amount not less than the claim from which the lien arises, or;

- (2) other security satisfactory to the CITY in an amount not less than that which is sufficient to discharge the claim from which the lien arises.
- 11.3.8 At the end of this Agreement, NCLHFP shall surrender the Property to the CITY free of any and all Hazardous Materials and in compliance with all Hazardous Materials' Laws affecting the Property.

ARTICLE 12 ASSIGNMENT: THIRD PARTY USE OF PROPERTY

- 12.1 <u>Assignment; CITY's Consent Required</u>. NCLHFP shall not voluntarily or involuntarily assign or otherwise transfer all or any portion of its rights and duties under this Agreement without the CITY's prior written consent. Any attempted assignment or transfer without the CITY's prior written consent shall be void.
- 12.2 <u>Third Party Use of the Property</u>. NCLHFP may engage third party organizations to provide special services or programming at the Property if:
 - 12.2.1 The City Manager consents, in writing, to the third party organizations' proposed use of the Property and;
 - 12.2.2 The third party organization obtains policies of insurance acceptable to the City's Risk Manager and Article 9.2 of this Agreement.

ARTICLE 13 DEFAULTS BY ARTS OR BY CITY; REMEDIES

- 13.1 <u>Events of Default; Remedies</u>. The following sub-articles shall apply if either NCLHFP or the CITY neglects, fails to perform, or fails to observe any of their respective obligations under the terms, covenants, or conditions contained in this Agreement ("Default"):
 - 13.1.1 <u>Thirty-Day Correction of Default</u>. If either NCLHFP or the CITY determines that the other party is in Default, then the non-defaulting party must provide the defaulting party written notice of the Default and thirty (30) days to correct the Default.
 - 13.1.2 Extended Correction of Default. If the defaulting party determines that more than thirty (30) days is required to correct the Default, the defaulting party must provide the other party written notice of the reasons why additional time is required to correct such Default. The defaulting party must use diligent efforts to correct a Default under this Article 13.1.2 and, in any case, must correct such Default within ninety (90) days from the date of the written notice of default.
 - 13.1.3 <u>Remedies for Failure to Correct Default</u>. If the defaulting party fails to comply with Article 13.1.1. or 13.1.2, then the non-defaulting party may immediately terminate

this Agreement. The defaulting party shall be liable to the non-defaulting party for any and all damages sustained by the non-defaulting party as a result of the defaulting parties' breach.

ARTICLE 14 ABANDONMENT

14.1 <u>Abandonment</u>. NCLHFP shall not vacate or abandon the Property at any time during the Term nor permit the Property to remain unoccupied for a period of longer than five (5) consecutive days during the term of this Agreement. These provisions shall not apply if the Property is closed and operation is temporarily discontinued therein on account of strikes, lockouts, acts of nature, or similar causes beyond the reasonable control of NCLHFP. Any exceptions must be submitted in writing to the City Manager or designee for approval.

ARTICLE 15 DAMAGE OR DESTRUCTION

- 15.1 <u>NCLHFP' Duty to Repair Casualty</u>. NCLHFP shall, as expeditiously as reasonably possible, repair any damages to the Property caused by fire, earthquake, or any other identifiable event of a sudden, unexpected, or unusual nature ("Casualty"), and repair, restore, and replace any such damaged or destroyed Fixtures, Improvements or Personal Property ("Casualty Repairs"). Any Casualty Repairs made under this Article 15 are:
 - (a) To be performed at NCLHFP's sole cost and expense;
 - (b) To be performed except as otherwise provided in this Article 15; and are
 - (c) Subject to all other terms and conditions of this Agreement.
- 15.2 <u>Construction Provisions</u>. In the event of any reconstruction of the Property, Fixtures or Improvements required of NCLHFP pursuant to this Article, NCLHFP shall repair the Property, and repair or rebuild such Fixtures and Improvements, to substantially the same condition they were in immediately preceding such Casualty.
- 15.3 No Abatement. In the event of reconstruction, replacement, or repair by NCLHFP pursuant to this Article, NCLHFP shall continue its operations on the Property during any such period to the extent reasonably practicable from the standpoint of prudent business management, and in continuing compliance with applicable laws and regulations. NCLHFP shall not be entitled to any compensation or damages from CITY for: (a) loss of use of the whole or any part of the Property; (b) NCLHFP's Personal Property; or (c) any inconvenience or annoyance occasioned by such damage, reconstruction, or replacement.
- Major Destruction. Notwithstanding any of the foregoing provisions of this Article to the contrary, if, at any time after the Commencement Date, (a) the Improvements are damaged or destroyed to the extent of more than twenty-five percent (25%) of their replacement cost, or (b) the damage is such that the Improvements cannot be repaired and

restored within one hundred and eighty (180) days after the Casualty, then NCLHFP shall have the right to terminate this Agreement upon thirty (30) days' prior written notice to the CITY.

ARTICLE 16 EMINENT DOMAIN

- 16.1 <u>Condemnation</u>. NCLHFP may terminate this Agreement within twenty (20) days after the date that a condemning authority (by a party other than the CITY) takes possession of the Property by delivery of written notice of such condemnation if:
 - (a) If all of the Property is taken under eminent domain proceedings; or
 - (b) less than all of the Property is taken under such eminent domain proceeding and the part taken substantially impairs the ability of NCLHFP to use the remainder of the Property for the purposes permitted by this Agreement.

In the absence of such written notice from a condemning authority, NCLHFP may terminate this Agreement within twenty (20) days after the condemning authority shall have taken possession.

- 16.2 <u>Continuation of Operating Agreement after Condemnation</u>. If this Agreement is not terminated by NCLHFP, it shall remain in full force and effect as to any portion of the Property remaining, and this Agreement will end as of the date possession of the part taken by the public entity as to the part of the Property that is taken.
- 16.3 <u>Award.</u> All monies awarded in any condemnation shall belong to the CITY. The CITY shall have no liability to NCLHFP for any award not provided by the condemning authority.

ARTICLE 17 SALE OR MORTGAGE BY CITY

- 17.1 <u>Sale or Mortgage</u>. The CITY may, pursuant to existing and subsequently enacted CITY ordinances and State laws, at any time, and without the consent of NCLHFP, vacate, sell, purchase, exchange, transfer, assign, lease, encumber or convey the CITY's interest in whole or in part, in the Property (collectively referred to in this Article as a "Sale"). The CITY shall provide to NCLHFP written notice of the CITY's intent to a Sale or discontinuance pursuant to this Article at least ninety (90) days prior to said proposed transfer.
- 17.2 <u>Release on Sale</u>. From and after a Sale or discontinuance of the CITY's entire interest in the Property, the CITY shall be released from all liability to NCLHFP and NCLHFP successors and assigns arising from this Agreement because of any act, occurrence, or omission of the CITY occurring after such Sale.

ARTICLE 18 CITY'S RIGHT OF ACCESS

- 18.1 <u>Right of Entry.</u> CITY, its agents, employees, and contractors may enter the Property at any time with or without notice to NCLHFP to:
 - (a) respond to health and safety concerns;
 - (b) inspect the Property and Improvements;
 - (c) determine whether NCLHFP is complying with its obligations in this Agreement (including its obligations with respect to compliance with Hazardous Materials Laws)
 - (d) post notices of non-responsibility or similar notices
 - (e) inspect the progress of construction of any improvement; or
 - (f) make repairs that this Agreement requires or allows CITY to make, or make repairs to any adjoining space or utility services, or make repairs, alterations, or improvements to any other portion of the Property

All work enumerated in this Article 18.1 must be done as promptly as reasonably possible and so as to cause as little interference to NCLHFP as reasonably possible.

ARTICLE 19 NOTICES

19.1 Notices. Whenever in this Agreement it shall be required or permitted that notice or demand be given or served by either party to this Agreement to or on the other, such notice or demand shall be in writing, mailed or personally delivered to the other party at the addresses specified below. Mailed notices shall be sent by United States Postal Service, postage prepaid and shall be deemed to have been given, delivered, and received three (3) business days after the date such notice or other communication is posted by the United States Postal Service. All other such notices or other communications shall be deemed given, delivered, and received upon actual receipt. Either party may, by written notice delivered pursuant to this provision, at any time designate a different address to which notices shall be sent.

CITY: CITY OF NATIONAL CITY

City Manager City of National City 1243 National City Boulevard National City, CA 91950-4397

With a copy to:

Housing & Economic Dev. Manager City of National City 140 East 12th Street, Suite B National City, CA 91950 NCLHFP: National City Living History Farm Preserve, Inc.

Executive Director 1808 "F" Avenue National City, CA 91950

ARTICLE 20 NON-DISCRIMINATION

20.1 <u>Non-Discrimination</u>. NCLHFP hereby covenants by and for itself, its successors, assigns and all persons claiming under or through it, that this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against, or segregation of, any person or group of persons on account of race, age, color, creed, religion, sex, sexual orientation, marital status, national origin, physical handicap, medical condition or ancestry in the use, operation, or enjoyment of the Property.

ARTICLE 21 RECORDS, ACCOUNTS, AND AUDITS

- 21.1 NCLHFP's Duty to Keep Records. NCLHFP shall, at all times during the Term, and for a period of five (5) years following expiration or earlier termination of this Agreement, keep or cause to be kept, true and complete books, records and accounts of all (a) construction undertaken pursuant to the rights conferred on NCLHFP under this Agreement, and (b) financial transactions in the operation of all business activities, of whatever nature, conducted pursuant to the rights granted by this Agreement. Such records shall also include the source and disposition of all trash and other waste collected and disposed of by NCLHFP in the operation of its business. Said records must be supported by source documents such as receipts, invoices, sales slips, cash register tapes, purchase invoices or other pertinent documents.
- 21.2 <u>CITY's Right to Audit</u>. All NCLHFP books, accounts, and records shall be kept and made available at one location within the limits of the County of San Diego. The CITY shall have the right at any reasonable time to examine and perform audits of NCLHFP's records pertaining to (a) construction undertaken pursuant to the rights conferred on NCLHFP under this Agreement, and (b) its operations on the Property, including, without limitation, any records pertaining to NCLHFPs' use of utilities on the Property. The cost of said audits shall be borne by the CITY, except that NCLHFP shall provide to the CITY, at NCLHFP's expense, necessary data to enable the CITY to fully comply with each and every requirement of the State of California or by the United States of America for information or reports relating to this Agreement and to NCLHFP's use of the Property.

ARTICLE 22 ADMINISTRATIVE PROVISIONS

22.1 <u>Authority</u>. NCLHFP represents and warrants that it has full power and authority to execute and fully perform its obligations under this Agreement pursuant to its governing

- instruments, without the need for any further action, and that the person executing this Agreement on behalf of NCLHFP is the duly designated agent of NCLHFP and is authorized to do so.
- 22.2 <u>Captions</u>. The captions and headings appearing in this Operating Agreement are inserted for convenience only and in no way define, limit, construe, or describe the scope or intent of the provisions of this Agreement.
- 22.3 <u>CITY Approval</u>. Except where stated in this Agreement to the contrary, the phrases "CITY approval," and "CITY's written approval" or such similar phrases shall mean approval of the City Manager or designee, which approval shall not be unreasonably withheld.
- 22.4 <u>Cumulative Remedies</u>. In the event of a default under this Agreement, each party's remedies shall be limited to those remedies set forth in this Agreement. Any such remedies are cumulative and not exclusive of any other remedies under this Agreement to which the non-defaulting party may be entitled.
- 22.5 <u>Entire Agreement</u>. This Agreement, together with all addenda and exhibits attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior or contemporaneous agreements, understandings and representations, oral or written, are superseded.
- 22.6 <u>Exhibits</u>. All exhibits referred to herein are attached hereto and incorporated by reference:
 - Exhibit "A": Legal description of the Property
- 22.7 Force Majeure. If either party is prevented or delayed from performing any act or discharging any obligation hereunder, because of any and all causes beyond either party's reasonable control, including unusual delays in deliveries, abnormally adverse weather conditions, unavoidable casualties, strikes, labor disputes, inability to obtain labor, materials or equipment, acts of God, governmental restrictions, regulations or controls, any hostile government actions, acts of terrorism, civil commotion and fire or other casualty, legal actions attacking the validity of this Agreement or the CITY or NCLHFP's operations of the Property, or any other casualties beyond the reasonable control of either party ("Force Majeure"), performance of such act shall be excused for the period of such delay, and the period of such delay. Force Majeure shall not include any bankruptcy, insolvency, or other financial inability on the part of either party hereto.
- 22.8 <u>Governing Law</u>. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California.
- 22.9 <u>Independent Contractor</u>. NCLHFP acknowledges that it is an independent contractor; that it alone retains control of the manner of conducting its activities in furtherance of this

- Agreement; and that it, as well as any persons, contractors or agents it may employ, are not employees of CITY for any purpose.
- 22.10 <u>Interpretation</u>. The provisions of this Agreement shall be liberally construed to effectuate its purpose. The language of all parts of this Agreement shall be construed simply according to its plain meaning and shall not be construed for or against either party.
- 22.11 NCLHFP's Agreement Administration. NCLHFP confirms that NCLHFP's Agreement Administrator has been given full operational responsibility for compliance with the terms of this Agreement. NCLHFP shall provide the CITY with a written schedule of its normal hours of business operation on the Property, and NCLHFP's Agreement Administrator, or a representative designated thereby, shall be available to the CITY during NCLHFP's normal business hours, to resolve problems or answer question pertaining to this Agreement and NCLHFP's operations on the Property.
- 22.12 <u>Modification</u>. The provisions of this Agreement may not be modified, except by a written amendment signed by both parties.
- 22.13 <u>Partial Invalidity</u>. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby. Each provision shall be valid and enforceable to the fullest extent permitted by law.
- 22.14 <u>Successors & Assigns</u>. This Agreement shall be binding on and inure to the benefit of the parties and their successors and assigns, except as may otherwise be provided herein. NCLHFP shall not assign this agreement to any other party unless approved in writing by the CITY.
- 22.15 <u>Time of Essence</u>. Time is of the essence of each and every provision of this Agreement.
- 22.16 <u>Waiver</u>. No provision of this Operating Agreement or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed.

IN WITNESS WHEREOF, the CITY and NCLHFP have duly executed this Agreement as of the day and year first above written.

CITY OF NATIONAL CITY (CITY)	NATIONAL CITY LIVING HISTORY FARM PRESERVE, a California non-profit corporation (NCLHFP)
By: Ron Morrison, Mayor	By:
	(Print)

APPROVED AS TO FORM: Angil P. Morris-Jones	$\overline{(Title)}$	
	By:	
By:	(ivame)	
Roberto M. Contreras		
Deputy City Attorney	(Print)	
	$\overline{(Title)}$	



MAINTENANCE AND OPERATING AGREEMENT

by and between

CITY OF NATIONAL CITY

and

THE NATIONAL CITY HISTORICAL SOCIETY

Dated as of ______, 2018

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MAINTENANCE AND OPERATING AGREEMENT BY AND BETWEEN THE CITY OF NATIONAL CITY AND

THE NATIONAL CITY HISTORICAL SOCIETY

This Maintenance and Operating Agreement (the "Agreement") is entered into as of _______, 2018, by and between the CITY OF NATIONAL CITY, a municipal corporation (the "CITY"), and the National City Historical Society, a California non-profit corporation (the "Historical Society").

RECITALS

- A. WHEREAS, the CITY owns the improved real property commonly known as the Frank Kimball House, located at 923 "A" Avenue, National City, California (the "Property"). The improvements on the Property are referred to as the "Kimball House". A legal description of the Property is attached hereto as Exhibit "A" and incorporated herein by reference.
- B. WHEREAS Article 11, Section 7 of the California Constitution empowers the City to provide for the health and welfare of its residents.
- C. WHEREAS, the CITY desires to enter into a Maintenance & Operating Agreement due to the special services to be performed under this Agreement for the City and to facilitate a more collaborative relationship between the CITY and the operator of the Property.
- D. WHEREAS, one of the goals of the CITY's General Plan is to develop educational experiences capable of promoting the cultural heritage of the City and lifting the spirits of residents and visitors to National City.
- E. WHEREAS, the CITY desires the services of an organization to maintain and operate the Property in a manner beneficial to the public.
- F. WHEREAS, the CITY has further determined that the Historical Society is skilled in maintaining a cultural and educational program to encourage an understanding and appreciation of National City history for the benefit of National City residents and visitors.
- G. WHEREAS, the CITY wishes to have the Historical Society maintain and operate the Property as an educational and cultural resource for the community's benefit, and the Historical Society is willing to operate and maintain the Property for such a purpose.

NOW, THEREFORE, in consideration of the foregoing facts, and in consideration of the promises and covenants hereinafter set forth, the parties agree as follows:

ARTICLE 1 TERM OF AGREEMENT

- 1.1 Term. The term of this Agreement shall be sixty (60) months, commencing October 1 2018 (the "Commencement Date") and expiring on October 31, 2023.
- 1.2 Option to Extend Term. If the Historical Society is not in default of any provision of this Agreement upon the expiration of the term described in Article 1.1, the City Manager or designee may extend the term for up to three (3) additional sixty (60) month periods. The initial sixty-month term, and any extension pursuant to this Article 1.2, shall collectively be referred to hereafter as the "Term."

ARTICLE 2 THE PROPERTY

- 2.1 <u>License for Use of Property</u>. The CITY grants the Historical Society a revocable license to enter and operate the Property for the purpose of (a) maintaining the historic nature of the Property and (b) operating a museum for the benefit of National City residents and visitors. The Historical Society's revocable license is subject to the covenants and requirements of this Agreement as of the Commencement Date. The Historical Society shall only have access to the first floor. However, the Historical Society may appoint one of its members as a caretaker to reside on the second floor of the Property. The caretaker must pay for the utilities for the second floor and provide security for the building. The caretaker must be approved by the CITY.
- 2.2 <u>Ownership of Personal Property and Improvements</u>. The rights and obligations of the parties regarding the ownership of personal property and improvements on the Property shall be as follows:
 - 2.2.1 Ownership of Personal Property. All improvements existing on the Property (Improvements), together with all fixtures permanently attached to the Property (Fixtures), as of the Commencement Date shall remain the property of the CITY during the Term. The Historical Society shall not remove any Improvements or Fixtures from the Property and shall also not waste, destroy, or modify any Improvements or Fixtures on the Property, except as permitted by this Agreement.
 - 2.2.2 <u>Ownership of Improvements and Equipment</u>. All improvements made to the property by the Historical Society shall become the property of the CITY.

ARTICLE 3 PERMITTED USE

3.1 <u>Purpose</u>. The parties intend that the operation of the Property by the Historical Society will provide an opportunity for the community to tour a historic Italianate style home and provide an educational and cultural resource within National City.

- 3.2 <u>Operations Plan</u>. The Historical Society must submit a written operations plan to the City that addresses all aspects of maintaining and operating the Property. This written operations plan must include, but will not be limited to, descriptions of the following:
 - 1) Hours of operation;
 - 2) Proposed activities or facilities available to the public;
 - 3) The number of employees or volunteers;
 - 4) Visitor safety and property security;
 - 5) Capital improvements;
 - 6) Property, building, and grounds preservation;
 - 7) Sources of funding, fundraising plan;
 - 8) Community outreach;
 - 9) Parking;
 - 10) Lighting;
 - 11) Handicap accommodations.
- 3.3 <u>Hours of Operation</u>. The Historical Society will open the Property to the public Saturday and Sunday from 11am to 1 p.m. and also for public special events scheduled in advance of the event. The Historical Society shall post, in a location visible from "A" Avenue, the hours of operation.
- 3.4 <u>Service Fees</u>. The Historical Society shall not provide any programs and services for profit. However, the Historical Society may charge user fees for classes and programs offered to school groups and the community to offset costs incurred by the Historical Society in its maintenance and operation of the Property. Any fees charged under this Article 3.4 must be approved by the City Manager or designee. The public shall pay no fee to gain access to the Property during those hours of operation listed in this Article 3.
- 3.5 Reporting by the National City Historical Society. The Historical Society shall provide annual reports to the CITY that identify the total number of: (a) National City residents who participated in Historical Society events; (b) participants and volunteers who participated in Historical Society events; (c) events and programs coordinated by the Historical Society; (c) capital projects completed; (e) operating and maintenance plans; and (f) any other relevant statistics. The information required to appear in the annual reports by this Article 3.5 will be referred to as "Statistical Information." Each annual report will include all previous years' worth of Statistical Information, if any. The Historical Society will deliver the annual report to the CITY at a mutually agreeable date and time.
- Annual Budget. The Historical Society shall provide to the CITY a proposed budget for the Historical Society's estimated maintenance and operating expenses for the Property by August 1st of each year during the term of this Agreement. The Historical Society shall provide to the CITY an audited financial report and tax returns, no later than August 1of each year during the term of this Agreement.
 - 3.6.1 <u>Advertising Donation.</u> The City will donate the sum of Five Thousand Dollars (\$5,000.00) to the Historical Society to be used for: (a) promotional materials; (b)

the printing informational brochures; and (c) for such other activities that will advertise the Frank Kimball House and National City in a positive manner. At each anniversary of the Commencement Date, the Historical Society shall provide the City a report detailing the use of all funds described in this Article 3.6.1.

- 3.7 <u>Volunteer Management</u>. The Historical Society may utilize volunteers to operate the Property, and in providing the Projects required by this Agreement. The Historical Society is responsible for recruiting, training, and managing all volunteers on the Property. Volunteers are considered the responsibility of the Historical Society for the purpose of workers compensation or general liability.
- 3.8 <u>Alcohol Use</u>. The Historical Society may hold events on the Property where alcoholic beverages are served. Alcoholic beverages shall be served subject to the following requirements:
 - Alcohol will not be served during youth programming under any circumstances.
 - Alcohol will be served in limited areas of the Property, designated by the Historical Society in advance, and approved by the City Manager or designee.
 - Alcoholic beverages must be served by a licensed bartender, with a copy of the bartender's license on the Property.
 - The event host must obtain approval from the state Department of Alcoholic Beverage Control to serve alcohol.
 - The event host is responsible for all guest behavior during and following the service of alcohol.
 - "Last call" for service of alcohol shall be at least thirty (30) minutes prior to the scheduled end of the event.
- 3.9 <u>Third-Party Rentals Prohibited</u>. Under no circumstance shall the Historical Society rent the Property to a third party.
- 3.10 <u>Consideration</u>. Historical Society's payment of \$1.00 to the CITY, and its performance under this Agreement, shall serve as the sole consideration due the CITY for Historical Society's license to use and operate the Property.
- 3.11 Compliance with Laws. The Historical Society, at its sole expense, shall procure, maintain, and hold available for the CITY's inspection any governmental license or permit required for the proper and lawful conduct of the Historical Society's operation of the Property. The Historical Society shall not use the Property for any use or purpose in violation of the laws of the United States of America, or the laws, ordinances, regulations, orders, or requirements of the State of California, the County of San Diego, the CITY, or of other lawful authorities. The Historical Society shall, at its sole expense, comply with all applicable statutes, laws, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect during the Term (Laws or Orders), regulating the use by the Historical Society of the Property.

- 3.11.1 Any programs, activities, or events that are not provided for in this Agreement may, in the CITY's sole discretion, require a Temporary Use Permit (TUP) or other permit as required by the CITY.
- 3.11.2 Cannabis Cultivation Prohibited. Notwithstanding any other provision in this Agreement, or in this Article 3.11, the Historical Society shall neither: (a) cultivate; (b) allow the cultivation of; (3) sell; nor (4) allow the sale of cannabis at the Property.

ARTICLE 4 UTILITIES

4.1 <u>Utility Services</u>. The CITY shall be responsible for maintaining reasonable utility services to the Property. The Historical Society shall provide and pay for all utilities or services necessary for its use and operation of the Property's first floor during the Term, including water, electricity, trash, and sewer charges. The Historical Society shall pay directly to the applicable utility company such charges, and the City shall have no obligation to pay for such utility services.

ARTICLE 5 REPAIRS; MAINTENANCE

5.1 Historical Society's Repair and Maintenance Obligations. The Historical Society acknowledges that it has made a thorough inspection of the Property and that it accepts the Property "as-is" as of the Commencement Date. At the Historical Society's own cost and expense, the Historical Society shall repair, replace, and maintain the Property in good, tenable condition as necessary. The Historical Society shall not be obligated to repair or replace damage to the Property caused by ordinary wear and tear. The Historical Society shall maintain the Property in an accessible manner for use by individuals with disabilities and comply with federal and state law regarding accessibility, including but not limited to the Americans with Disabilities Act and California's Disabled Persons Act. Other than repair work in emergency situations not exceeding Three Thousand and no/100 Dollars (\$3,000), the Historical Society shall not perform any repair work without the CITY's prior written consent. As used in this Article 5.1, "emergency" means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. All emergency repairs performed by the City on the Property are governed by Public Contract Code Section 22050. The Historical Society's obligations under this Article shall apply regardless of whether the repairs, restorations, and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital or noncapital, the fault or not the fault of the Historical Society, its agents, employees, volunteers, invitees, visitors, or contractors. All replacements made by the Historical Society shall be of like size, kind, and quality to the items replaced.

- 5.2 <u>CITY Repair and Maintenance Obligations</u>. For any repair and maintenance work exceeding Three Thousand and no/100 Dollars (\$3,000), the CITY will consider the nature and priority of the work and available funding to determine if and when such repairs will be completed.
- 5.3 <u>CITY Right to Inspect; CITY Not Obligated to Repair or Maintain</u>. The Historical Society shall permit the CITY to enter the Property at all times during usual hours of operation to inspect the Property. Any entry pursuant to this Article 5.3 shall not unreasonably interfere with the Historical Society's operation of the Property. However, nothing contained in this Article 5 shall create any duty on the part of the CITY to do any work which, under any provision of this Agreement, the Historical Society may be required to do.

ARTICLE 6 IMPROVEMENTS; ALTERATIONS

- Alterations. The Historical Society may alter, replace, add to, change, or construct additional improvements to the Property (collectively, "Alterations") as the Historical Society may find necessary or convenient for its operation of the Property. Any Alterations performed by the Historical Society under this Article 6.1 shall be performed: (a) at the Historical Society's sole cost and expense; (b) with the CITY's prior written consent; and (c) in accordance with construction plans submitted to and approved by the CITY.
- 6.2 <u>Construction Permits and Licenses</u>. At all times during the Term, the Historical Society shall procure, at its sole cost and expense, all permits and licenses that are necessary or required from any local governmental agency for the proposed construction of any Alterations. The CITY may, in its sole discretion, waive CITY permitting fees where applicable.
- 6.3 <u>Proposed Plans</u>. In its sole discretion, the CITY may require the Historical Society to do any of the following:
 - Submit a complete set of proposed plans of any Alterations to the CITY;
 - Apply for and receive a permit from the Building Department to complete any Alterations;
 - Within sixty (60) days of a written request, furnish the CITY with a complete set of "as-built" plans for any CITY-approved Alterations.
- 6.4 <u>Prevailing Wages</u>. The Historical Society shall comply with prevailing wage statutes for any work not performed by volunteers.

ARTICLE 7
MECHANICS' LIENS; STOP NOTICES

- Mechanics' Liens; Stop Notices. The Historical Society shall pay, or cause to be paid, the total cost and expense of all works of improvement, as that phrase is defined in the Mechanics Lien Law in effect at time and place of construction, done by it, or caused to be done by it, on the Property, and for all materials furnished for or in connection with any such work. If any lien or stop notice is filed against the Property, the Historical Society shall cause the lien or stop notice to be discharged of record within one hundred eighty (180) days after it is filed. The Historical Society shall indemnify, defend, and hold the CITY harmless from any and all liability, loss, damage, costs, attorneys' fees, and all other expenses on account of claims of lien of laborers, materialmen, or others for work performed, or materials or supplies furnished for the Historical Society or persons claiming under the Historical Society.
- 7.2 <u>Notice of Lien or Stop Notice</u>. Should any claim of lien or stop notice related to the Historical Society's work of improvement of the Property be filed against the Property, or any action be filed against the Property, or any action affecting the title to the Property be commenced, the party receiving notice of such lien or stop notice or action shall immediately give the other party written notice thereof.
- 7.3 Notice of Non-Responsibility. The CITY or its representatives shall have the right to post and keep posted on the Property notices of non-responsibility or such other notices which the CITY may deem to be proper for the protection of the CITY's interest in the Property. The Historical Society shall, before the commencement of any work which might result in any such lien or stop notice, give to the CITY written notice of its intention to do so with sufficient time to enable posting of such notices.

ARTICLE 8 TAXES

- 8.1 <u>Definition</u>. "Taxes" shall mean all taxes, governmental bonds, special assessments, charges, or transfer taxes, license and transaction fees, including, but not limited to, (a) any state, local, federal income tax, or any real or personal property tax, (b) increases in taxes attributable to the Historical Society's operation of the Property, or (c) any taxes which are essentially payments to a governmental agency, other than the CITY, for the right to make improvements to the Property.
- 8.2 <u>Possessory Interest</u>. Notwithstanding Article 2.1, the Historical Society acknowledges that this Agreement may create a possessory interest subject to property taxation and that the Historical Society may be subject to the payment of taxes levied on such interest. The Historical Society shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon the Property.
- 8.3 Responsibility for Payment of Taxes. The CITY shall not be obligated to pay any Taxes accruing against any interest in the Historical Society's use of the Property at any time before or during the Term. The Historical Society shall pay any Taxes that accrue against any interest in the Historical Society's use of the Property. Additionally, the Historical

Society shall pay any Taxes levied upon any Improvements, Fixtures, or Personal Property located on the Property to the extent such Taxes result from the Historical Society's operations or other activities held upon, or in connection with, the Property.

ARTICLE 9 INDEMNIFICATION AND INSURANCE

9.1 <u>Historical Society Indemnity</u>. The CITY shall not be liable for, and the Historical Society shall defend, indemnify, and hold harmless the CITY, its officers, officials, agents, employees, and volunteers from any and all claims, costs, liability, loss, damages to property, injuries to, or death of any person or persons, and all claims, demands, suits, actions, proceedings, reasonable attorneys' fees, and defense costs, of any kind or nature, including workers' compensation claims resulting from, related to, or arising out of the Historical Society's improvement, operation or use of the Property, or arising either directly or indirectly from any act, error, omission, or negligence of the Historical Society or its contractors, licensees, invitees, members, agents, servants or employees; provided, however, that this indemnification and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the City, its agents, officers, officials, employees, or volunteers. CITY will cooperate reasonably in the defense of any action, and the Historical Society shall employ competent counsel, reasonably acceptable to the CITY'S City Attorney.

The indemnity, defense, and hold harmless obligations contained herein shall survive the termination of this Agreement for any alleged or actual omission, act, or negligence under this Agreement that occurred during the term of this Agreement.

- 9.1.1 <u>Third Party Indemnity</u>. The Historical Society shall not invite third party organizations onto the Property until said third party organization furnishes CITY a written agreement in which it indemnifies and holds CITY harmless, upon terms satisfactory to CITY.
- 9.1.2 <u>Waivers from Third Parties</u>. The Historical Society agrees to obtain from all guests, invitees, or third party organizations whose participants visit the Property, a waiver of liability and hold harmless agreement upon terms satisfactory to the CITY.
- 9.2 <u>Insurance.</u> The Historical Society, at its sole cost and expense, shall purchase and maintain, and shall require its subcontractors, and third party organizations the Historical Society invites onto the Property, to purchase and maintain throughout the term of this Agreement, the following insurance policies:
 - 9.2.1 Commercial General Liability Insurance (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with minimum limits of \$2,000,000 per occurrence and \$4,000,000 aggregate, covering all bodily injury and property damage arising out of its

operations under this Agreement. The policy shall name the CITY and its officers, agents, employees, and volunteers as additional insureds, and a separate additional insured endorsement shall be provided. The general aggregate limit must apply solely to this "project" or "location." The Commercial General Liability required by this Article must include Sexual Misconduct Liability coverage.

- 9.2.2 **Automobile Insurance** covering all bodily injury and property damage incurred during the performance of this Agreement, with a minimum coverage of \$1,000,000 combined single limit per accident. Such automobile insurance shall include owned, non-owned, and hired vehicles ("Any Auto"). The policy shall name the CITY and its officers, agents, employees, and volunteers as additional insureds, and a separate additional insured endorsement shall be provided.
- 9.2.3 **Workers' Compensation Insurance** in an amount sufficient to meet statutory requirements covering all of the Historical Society's employees, and employers' liability insurance with limits of at least \$1,000,000 per accident. In addition, the policy shall be endorsed with a waiver of subrogation in favor of the City. Said endorsement shall be provided prior to commencement of work under this Agreement.
- 9.2.4 **Property Insurance** against all risks of loss to any improvements or betterments made by the Historical Society, or any third party with permission from the Historical Society, at full replacement cost with no coinsurance penalty provision.
- 9.2.5 The aforesaid policies shall constitute primary insurance, at least as broad as ISO CG 20 01 04 13, as to the CITY, its officers, employees, and volunteers, so that any other policies held by the CITY shall not contribute to any loss under said insurance. Said policies shall provide for thirty (30) days prior written notice to the CITY's Risk Manager, at the address listed in Article 9.2.7 below, of cancellation or material change.
- 9.2.6 If required insurance coverage is provided on a "claims made" rather than "occurrence" form, the Historical Society shall maintain such insurance coverage for three years after expiration of the term (and any extensions) of this Agreement. In addition, the "retro" date must be on or before the date of this Agreement.
- 9.2.7 The Certificate Holder for all policies of insurance required by this Article 9.2 shall be:

City of National City c/o Risk Manager 1243 National City Boulevard National City, CA 91950-4397

- Insurance shall be written with only insurers authorized to conduct business in California that hold a current policy holder's alphabetic and financial size category rating of not less than A VIII according to the current Best's Key Rating Guide, or a company of equal financial stability that is approved by the CITY'S Risk Manager. In the event coverage is provided by non-admitted "surplus lines" carriers, they must be included on the most recent California List of Eligible Surplus Lines Insurers (LESLI list) and otherwise meet rating requirements.
- 9.2.9 This Agreement shall not take effect until certificate(s) or other sufficient proof that these insurance provisions have been complied with, are filed with and approved by the CITY'S Risk Manager. If the Historical Society does not keep all of such insurance policies in full force and effect at all times during the terms of this Agreement, the CITY may elect to treat the failure to maintain the requisite insurance as a breach of this Agreement and terminate the Agreement as provided herein.
- 9.2.10 All deductibles and self-insured retentions in excess of \$10,000 must be disclosed to and approved by the CITY. CITY reserves the right to modify the insurance requirements of this Article 9.32, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- 9.2.11 If the Historical Society maintains broader coverage or higher limits (or both) than the minimum limits shown above, the CITY requires and shall be entitled to the broader coverage or higher limits (or both) maintained by the Historical Society. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the CITY.

ARTICLE 10 TERMINATION

10.1 This Agreement may be terminated with or without cause by the CITY. Termination without cause shall be effective only upon 60-day's written notice to the Historical Society. During said 60-day period, the Historical Society shall perform all services in accordance with this Agreement. This Agreement may also be terminated immediately by the CITY for cause in the event of a material breach of this Agreement, misrepresentation by the Historical Society in connection with the formation of this Agreement or the performance of services, or the failure to perform services as directed by the CITY. Termination with or without cause shall be effected by delivery of written Notice of Termination to the Historical Society as provided for herein. The CITY further reserves the right to immediately terminate this Agreement upon: (a) the filing of a petition in bankruptcy affecting the Historical Society; (b) a reorganization of the Historical Society for the benefit of creditors; or (c) a business reorganization, change in business name or change in business status of the Historical Society.

ARTICLE 11 HAZARDOUS MATERIALS

- 11.1 <u>Hazardous Materials Laws-Definition</u>. As used in this Article, the term "Hazardous Materials' Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law") relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under, or about the Property, soil and ground water conditions, or other similar substances or conditions. The following legal authority is a non-exhaustive list of the legal authority that applies to the definition of the term "Hazardous Materials Laws":
 - the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C., Section 9601 *et seq.*)
 - the Hazardous Materials Transportation Act, as amended (49 U.S.C., Section 1801 *et seq.*), and
 - the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C., Section 6901 *et seq.*)
- 11.2 <u>Hazardous Materials Definition</u>. As used in this Article the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that:
 - 11.2.1 is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials;
 - 11.2.2 is controlled, referred to, designated in or governed by any Hazardous Materials Laws;
 - 11.2.3 gives rise to any reporting, notice or publication requirements under any Hazardous Materials Laws, or;
 - 11.2.4 is any other material or substance giving rise to any liability, responsibility or duty upon the CITY or the Historical Society with respect to any third person under any Hazardous Materials Law.
- 11.3 <u>Historical Society Representations and Warranties</u>. The Historical Society represents and warrants that, during the Term or any extension thereof, the Historical Society shall comply with the following provisions of this Article unless otherwise specifically approved in writing by the CITY, subject to the terms and conditions of the Historical Society's maintenance obligations provided elsewhere in this Agreement:
 - 11.3.1 The Historical Society shall not cause or permit any Hazardous Materials to be brought, kept or used in or about the Property by the Historical Society, its agents,

- employees, assigns, contractors or invitees, except as required by the Historical Society's permitted use of the Property in the normal course of operations;
- 11.3.2 Any handling, transportation, storage, treatment, or usage by the Historical Society of Hazardous Materials that is to occur on the Property following the Commencement Date shall be in compliance with all applicable Hazardous Materials Laws;
- 11.3.3 Any leaks, spills, release, discharge, emission or disposal of Hazardous Materials which may occur on the Property following the Commencement Date shall be promptly and thoroughly cleaned and removed from the Property by the Historical Society at its sole expense, and any such discharge shall be promptly reported in writing to the CITY, and to any other appropriate governmental regulatory authorities;
- 11.3.4 No friable asbestos shall be constructed, placed on, deposited, stored, disposed of, or located by the Historical Society on the Property;
- 11.3.5 No underground improvements, including but not limited to treatment or storage tanks, or water, gas or oil wells shall be located by the Historical Society on the Property without the CITY's prior written consent;
- 11.3.6 The Historical Society shall promptly supply the CITY with copies of all notices, reports, correspondence, and submissions made by the Historical Society to the United States Environmental Protection Agency, the United Occupational Safety and Health Administration, and any other local, state or federal authority which requires submission of any information concerning environmental matters or hazardous wastes or substances pursuant to applicable Hazardous Materials' Laws; and
- 11.3.7 The Historical Society shall promptly notify the CITY of any liens threatened or attached against the Property pursuant to any Hazardous Materials' Law. If such a lien is filed against the Property, then, within the earlier of (i) twenty (20) days following such filing, or (ii) before any governmental authority commences proceedings to sell the Property pursuant to the lien, the Historical Society shall either:
 - (a) pay the claim and remove the lien from the Property, or
 - (b) furnish either:
 - (1) a bond or cash deposit reasonably satisfactory to the CITY in an amount not less than the claim from which the lien arises, or;

- (2) other security satisfactory to the CITY in an amount not less than that which is sufficient to discharge the claim from which the lien arises.
- 11.3.8 At the end of this Agreement, the Historical Society shall surrender the Property to the CITY free of any and all Hazardous Materials and in compliance with all Hazardous Materials' Laws affecting the Property.

ARTICLE 12 ASSIGNMENT; THIRD PARTY USE OF PROPERTY

- 12.1 <u>Assignment; CITY's Consent Required</u>. The Historical Society shall not voluntarily or involuntarily assign or otherwise transfer all or any portion of its rights and duties under this Agreement without the CITY's prior written consent. Any attempted assignment or transfer without the CITY's prior written consent shall be void.
- 12.2 <u>Third Party Use of the Property</u>. Consistent with Article 3.9, the Historical Society shall not rent the Property to third party organizations.

ARTICLE 13 DEFAULTS BY HISTORICAL SOCIETY OR BY CITY; REMEDIES

- 13.1 Events of Default; Remedies. The following sub-articles shall apply if either the Historical Society or the CITY neglects, fails to perform, or fails to observe any of their respective obligations under the terms, covenants, or conditions contained in this Agreement ("Default"):
 - 13.1.1 <u>Thirty-Day Correction of Default</u>. If either the Historical Society or the CITY determines that the other party is in Default, then the non-defaulting party must provide the defaulting party written notice of the Default and thirty (30) days to correct the Default.
 - 13.1.2 Extended Correction of Default. If the defaulting party determines that more than thirty (30) days is required to correct the Default, the defaulting party must provide the other party written notice of the reasons why additional time is required to correct such Default. The defaulting party must use diligent efforts to correct a Default under this Article 13.1.2 and, in any case, must correct such Default within ninety (90) days from the date of the written notice of default.
 - 13.1.3 <u>Remedies for Failure to Correct Default</u>. If the defaulting party fails to comply with Article 13.1.1. or 13.1.2, then the non-defaulting party may immediately terminate this Agreement. The defaulting party shall be liable to the non-defaulting party for any and all damages sustained by the non-defaulting party as a result of the defaulting parties' breach.

ARTICLE 14

ABANDONMENT

14.1 <u>Abandonment</u>. The Historical Society shall not vacate or abandon the Property at any time during the Term nor permit the Property to remain unoccupied for a period of longer than five (5) consecutive days during the term of this Agreement. These provisions shall not apply if the Property is closed and operation is temporarily discontinued therein on account of strikes, lockouts, acts of nature, or similar causes beyond the reasonable control of the Historical Society. Any exceptions must be submitted in writing to the City Manager or designee for approval.

ARTICLE 15 DAMAGE OR DESTRUCTION

- 15.1 <u>Historical Society's Duty to Repair Casualty</u>. The Historical Society shall, as expeditiously as reasonably possible, repair any damages to the Property caused by fire, earthquake, or any other identifiable event of a sudden, unexpected, or unusual nature ("Casualty"), and repair, restore, and replace any such damaged or destroyed Fixtures, Improvements or Personal Property ("Casualty Repairs"). Any Casualty Repairs made under this Article 15 are:
 - (a) To be performed at the Historical Society' sole cost and expense;
 - (b) To be performed except as otherwise provided in this Article 15; and are
 - (c) Subject to all other terms and conditions of this Agreement.
- 15.2 <u>Construction Provisions</u>. In the event of any reconstruction of the Property, Fixtures or Improvements required of the Historical Society pursuant to this Article, the Historical Society shall repair the Property, and repair or rebuild such Fixtures and Improvements, to substantially the same condition they were in immediately preceding such Casualty.
- 15.3 No Abatement. In the event of reconstruction, replacement, or repair by the Historical Society pursuant to this Article, the Historical Society shall continue its operations on the Property during any such period to the extent reasonably practicable from the standpoint of prudent business management, and in continuing compliance with applicable laws and regulations. The Historical Society shall not be entitled to any compensation or damages from CITY for: (a) loss of use of the whole or any part of the Property; (b) the Historical Society's Personal Property; or (c) any inconvenience or annoyance occasioned by such damage, reconstruction, or replacement.
- Major Destruction. Notwithstanding any of the foregoing provisions of this Article to the contrary, if, at any time after the Commencement Date, (a) the Improvements are damaged or destroyed to the extent of more than twenty-five percent (25%) of their replacement cost, or (b) the damage is such that the Improvements cannot be repaired and restored within one hundred and eighty (180) days after the Casualty, then the Historical Society shall have the right to terminate this Agreement upon thirty (30) days' prior written notice to the CITY.

ARTICLE 16 EMINENT DOMAIN

- 16.1 <u>Condemnation</u>. The Historical Society may terminate this Agreement within twenty (20) days after the date that a condemning authority (by a party other than the CITY) takes possession of the Property by delivery of written notice of such condemnation if:
 - (a) If all of the Property is taken under eminent domain proceedings; or
 - (b) less than all of the Property is taken under such eminent domain proceeding and the part taken substantially impairs the ability of the Historical Society to use the remainder of the Property for the purposes permitted by this Agreement.

In the absence of such written notice from a condemning authority, the Historical Society may terminate this Agreement within twenty (20) days after the condemning authority shall have taken possession.

- 16.2 <u>Continuation of Operating Agreement after Condemnation</u>. If this Agreement is not terminated by the Historical Society, it shall remain in full force and effect as to any portion of the Property remaining, and this Agreement will end as of the date possession of the part taken by the public entity as to the part of the Property that is taken.
- 16.3 <u>Award.</u> All monies awarded in any condemnation shall belong to the CITY. The CITY shall have no liability to the Historical Society for any award not provided by the condemning authority.

ARTICLE 17 SALE OR MORTGAGE BY CITY

- 17.1 <u>Sale or Mortgage</u>. The CITY may, pursuant to existing and subsequently enacted CITY ordinances and State laws, at any time, and without the consent of the Historical Society, vacate, sell, purchase, exchange, transfer, assign, lease, encumber or convey the CITY's interest in whole or in part, in the Property (collectively referred to in this Article as a "Sale"). The CITY shall provide to the Historical Society written notice of the CITY's intent to a Sale or discontinuance pursuant to this Article at least ninety (90) days prior to said proposed transfer.
- 17.2 <u>Release on Sale</u>. From and after a Sale or discontinuance of the CITY's entire interest in the Property, the CITY shall be released from all liability to the Historical Society and the Historical Society successors and assigns arising from this Agreement because of any act, occurrence, or omission of the CITY occurring after such Sale.

ARTICLE 18 CITY'S RIGHT OF ACCESS

- 18.1 <u>Right of Entry.</u> CITY, its agents, employees, and contractors may enter the Property at any time with or without notice to the Historical Society to:
 - (a) respond to health and safety concerns;
 - (b) inspect the Property and Improvements;
 - (c) determine whether the Historical Society is complying with its obligations in this Agreement (including its obligations with respect to compliance with Hazardous Materials Laws)
 - (d) post notices of non-responsibility or similar notices
 - (e) inspect the progress of construction of any improvement; or
 - (f) make repairs that this Agreement requires or allows CITY to make, or make repairs to any adjoining space or utility services, or make repairs, alterations, or improvements to any other portion of the Property

All work enumerated in this Article 18.1 must be done as promptly as reasonably possible and so as to cause as little interference to the Historical Society as reasonably possible.

ARTICLE 19 NOTICES

19.1 Notices. Whenever in this Agreement it shall be required or permitted that notice or demand be given or served by either party to this Agreement to or on the other, such notice or demand shall be in writing, mailed or personally delivered to the other party at the addresses specified below. Mailed notices shall be sent by United States Postal Service, postage prepaid and shall be deemed to have been given, delivered, and received three (3) business days after the date such notice or other communication is posted by the United States Postal Service. All other such notices or other communications shall be deemed given, delivered, and received upon actual receipt. Either party may, by written notice delivered pursuant to this provision, at any time designate a different address to which notices shall be sent.

CITY: CITY OF NATIONAL CITY

City Manager City of National City 1243 National City Boulevard National City, CA 91950-4397

With a copy to:

Housing & Economic Dev. Manager City of National City 140 East 12th Street, Suite B National City, CA 91950

Historical Society: National City Historical Society

Executive Director

923 A Avenue National City, CA 91950

ARTICLE 20 NON-DISCRIMINATION

20.1 <u>Non-Discrimination</u>. The Historical Society hereby covenants by and for itself, its successors, assigns and all persons claiming under or through it, that this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against, or segregation of, any person or group of persons on account of race, age, color, creed, religion, sex, sexual orientation, marital status, national origin, physical handicap, medical condition or ancestry in the use, operation, or enjoyment of the Property.

ARTICLE 21 RECORDS, ACCOUNTS, AND AUDITS

- 21.1 <u>Historical Society' Duty to Keep Records</u>. The Historical Society shall, at all times during the Term, and for a period of five (5) years following expiration or earlier termination of this Agreement, keep or cause to be kept, true and complete books, records and accounts of all (a) construction undertaken pursuant to the rights conferred on the Historical Society under this Agreement, and (b) financial transactions in the operation of all business activities, of whatever nature, conducted pursuant to the rights granted by this Agreement. Such records shall also include the source and disposition of all trash and other waste collected and disposed of by the Historical Society in the operation of its business. Said records must be supported by source documents such as receipts, invoices, sales slips, cash register tapes, purchase invoices or other pertinent documents.
- 21.2 <u>CITY's Right to Audit</u>. All the Historical Society books, accounts, and records shall be kept and made available at one location within the limits of the County of San Diego. The CITY shall have the right at any reasonable time to examine and perform audits of the Historical Society's records pertaining to (a) construction undertaken pursuant to the rights conferred on the Historical Society under this Agreement, and (b) its operations on the Property, including, without limitation, any records pertaining to the Historical Society's use of utilities on the Property. The cost of said audits shall be borne by the CITY, except that the Historical Society shall provide to the CITY, at the Historical Society's expense, necessary data to enable the CITY to fully comply with each and every requirement of the State of California or by the United States of America for information or reports relating to this Agreement and to the Historical Society's use of the Property.

ARTICLE 22 ADMINISTRATIVE PROVISIONS

22.1 <u>Authority</u>. The Historical Society represents and warrants that it has full power and authority to execute and fully perform its obligations under this Agreement pursuant to its governing instruments, without the need for any further action, and that the person

- executing this Agreement on behalf of the Historical Society is the duly designated agent of the Historical Society and is authorized to do so.
- 22.2 <u>Captions</u>. The captions and headings appearing in this Operating Agreement are inserted for convenience only and in no way define, limit, construe, or describe the scope or intent of the provisions of this Agreement.
- 22.3 <u>CITY Approval</u>. Except where stated in this Agreement to the contrary, the phrases "CITY approval," and "CITY's written approval" or such similar phrases shall mean approval of the City Manager or designee, which approval shall not be unreasonably withheld.
- 22.4 <u>Cumulative Remedies</u>. In the event of a default under this Agreement, each party's remedies shall be limited to those remedies set forth in this Agreement. Any such remedies are cumulative and not exclusive of any other remedies under this Agreement to which the non-defaulting party may be entitled.
- 22.5 <u>Entire Agreement</u>. This Agreement, together with all addenda and exhibits attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior or contemporaneous agreements, understandings and representations, oral or written, are superseded.
- 22.6 <u>Exhibits</u>. All exhibits referred to herein are attached hereto and incorporated by reference:
 - Exhibit "A": Legal description of the Property
- 22.7 Force Majeure. If either party is prevented or delayed from performing any act or discharging any obligation hereunder, because of any and all causes beyond either party's reasonable control, including unusual delays in deliveries, abnormally adverse weather conditions, unavoidable casualties, strikes, labor disputes, inability to obtain labor, materials or equipment, acts of God, governmental restrictions, regulations or controls, any hostile government actions, acts of terrorism, civil commotion and fire or other casualty, legal actions attacking the validity of this Agreement or the CITY or the Historical Society's operations of the Property, or any other casualties beyond the reasonable control of either party ("Force Majeure"), performance of such act shall be excused for the period of such delay, and the period for performance of such act shall be extended for a period equivalent to the period of such delay. Force Majeure shall not include any bankruptcy, insolvency, or other financial inability on the part of either party hereto.
- 22.8 <u>Governing Law</u>. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California.
- 22.9 <u>Independent Contractor</u>. The Historical Society acknowledges that it is an independent contractor; that it alone retains control of the manner of conducting its activities in

- furtherance of this Agreement; and that it, as well as any persons, contractors or agents it may employ, are not employees of CITY for any purpose.
- 22.10 <u>Interpretation</u>. The provisions of this Agreement shall be liberally construed to effectuate its purpose. The language of all parts of this Agreement shall be construed simply according to its plain meaning and shall not be construed for or against either party.
- 22.11 <u>Historical Society's Agreement Administration</u>. The Historical Society confirms that the Historical Society's Agreement Administrator has been given full operational responsibility for compliance with the terms of this Agreement. The Historical Society shall provide the CITY with a written schedule of its normal hours of business operation on the Property, and the Historical Society's Agreement Administrator, or a representative designated thereby, shall be available to the CITY during the Historical Society's normal business hours, to resolve problems or answer question pertaining to this Agreement and the Historical Society's operations on the Property.
- 22.12 <u>Modification</u>. The provisions of this Agreement may not be modified, except by a written amendment signed by both parties.
- 22.13 <u>Partial Invalidity</u>. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby. Each provision shall be valid and enforceable to the fullest extent permitted by law.
- 22.14 <u>Successors & Assigns</u>. This Agreement shall be binding on and inure to the benefit of the parties and their successors and assigns, except as may otherwise be provided herein. The Historical Society shall not assign this agreement to any other party unless approved in writing by the CITY.
- 22.15 Time of Essence. Time is of the essence of each and every provision of this Agreement.
- 22.16 <u>Waiver</u>. No provision of this Operating Agreement or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed.

IN WITNESS WHEREOF, the CITY and the Historical Society have duly executed this Agreement as of the day and year first above written.

CITY OF NATIONAL CITY (CITY)	NATIONAL CITY HISTORICAL SOCIETY, a California non-profit corporation (Historical Society)
By:Ron Morrison, Mayor	Bv:
Kon Wonison, Wayor	(Name)

	(Print)
APPROVED AS TO FORM:	
Angil P. Morris-Jones	(Title)
D	By:
By:Roberto M. Contreras	(Name)
Deputy City Attorney	(D.1.1)
	(Print)
	-
	(Title)